

~~long as it is producing)) or ((is covered by)) (4) participate in a unit plan to which the commissioner has consented ((to participate in)) under RCW 78.52.450.~~

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House February 6, 1986.

Passed the Senate February 27, 1986.

Approved by the Governor March 10, 1986.

Filed in Office of Secretary of State March 10, 1986.

CHAPTER 35

[Substitute House Bill No. 1451]

INVESTMENT SECURITIES

AN ACT Relating to investment securities; amending RCW 62A.8-102, 62A.8-103, 62A.8-104, 62A.8-105, 62A.8-106, 62A.8-107, 62A.8-201, 62A.8-202, 62A.8-203, 62A.8-204, 62A.8-205, 62A.8-206, 62A.8-207, 62A.8-208, 62A.8-301, 62A.8-302, 62A.8-303, 62A.8-304, 62A.8-305, 62A.8-306, 62A.8-307, 62A.8-308, 62A.8-309, 62A.8-310, 62A.8-311, 62A.8-312, 62A.8-313, 62A.8-314, 62A.8-315, 62A.8-316, 62A.8-317, 62A.8-318, 62A.8-319, 62A.8-320, 62A.8-401, 62A.8-402, 62A.8-403, 62A.8-404, 62A.8-405, 62A.8-406, 62A.9-103, 62A.9-105, 62A.9-203, 62A.9-302, 62A.9-304, 62A.9-305, 62A.9-309, 62A.9-312, 62A.1-201, 62A.5-114, 23A.08.190, 23A.08.200, 23A.08.310, 23A.08.320, 23A.08.330, and 23A.24.040; adding a new section to chapter 23A.08 RCW; and adding new sections to Article 8 of Title 62A RCW.

Be it enacted by the Legislature of the State of Washington:

PART I

SHORT TITLE AND GENERAL MATTERS

Sec. 1. Section 8-102, chapter 157, Laws of 1965 ex. sess. as amended by section 1, chapter 98, Laws of 1973 and RCW 62A.8-102 are each amended to read as follows:

DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this Article, unless the context otherwise requires:

- (a) ~~((A "security" is an instrument which~~
- ~~(i) is issued in bearer or registered form; and~~
- ~~(ii) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and~~
- ~~(iii) is either one of a class or series or by its terms is divisible into a class or series of instruments; and~~
- ~~(iv) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.~~

(b)) A "certificated security" is a share, participation, or other interest in property of or an enterprise of the issuer or an obligation of the issuer which is

(i) represented by an instrument issued in bearer or registered form;

(ii) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

(b) An "uncertificated security" is a share, participation, or other interest in property of or an enterprise of the issuer or an obligation of the issuer which is

(i) not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) of a type commonly dealt in on securities exchanges or markets; and

(iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

(c) A "security" is either a certificated or an uncertificated security. If a security is certificated, the terms "security" and "certificated security" may mean either the intangible interest, the instrument representing that interest, or both, as the context requires. A writing ((which)) that is a certificated security is governed by this Article and not by ((Uniform Commercial Code—Commercial Paper)) Article 3, even though it also meets the requirements of that Article. This Article does not apply to money. If a certificated security has been retained by or surrendered to the issuer or its transfer agent for reasons other than registration of transfer, other temporary purpose, payment, exchange, or acquisition by the issuer, that security shall be treated as an uncertificated security for purposes of this Article.

((c)) (d) A certificated security is in "registered form" ((when)) if

(i) it specifies a person entitled to the security or ((to)) the rights it ((evidences)) represents, and ((when))

(ii) its transfer may be registered upon books maintained for that purpose by or on behalf of ((an)) the issuer, or the security so states.

((d)) (e) A certificated security is in "bearer form" ((when)) if it runs to bearer according to its terms and not by reason of any indorsement.

(2) A "subsequent purchaser" is a person who takes other than by original issue.

(3) A "clearing corporation" is a corporation registered as a "clearing agency" under the federal securities laws or a corporation((-):

(a) At least ((ninety)) 90 percent of ((the)) whose capital stock ((of which)) is held by or for one or more ((persons (other than individuals);)) organizations, none of which, other than a national securities exchange or

association, holds in excess of 20 percent of the capital stock of the corporation, and each of ((whom)) which is

(i) ~~((is))~~ subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws, ~~((or))~~

(ii) ~~((is))~~ a broker or dealer or investment company registered under the ~~((Securities Exchange Act of 1934 or the Investment Company Act of 1940))~~ federal securities laws, or

(iii) ~~((is))~~ a national securities exchange or association registered under ~~((a statute of the United States such as the Securities Exchange Act of 1934))~~ the federal securities laws; and ((none of whom, other than a national securities exchange or association, holds in excess of twenty percent of the capital stock of such corporation; and))

(b) Any remaining capital stock of which is held by individuals who have purchased ~~((such capital stock))~~ it at or prior to the time of their taking office as directors of ~~((such))~~ the corporation and who have purchased only so much of ~~((such))~~ the capital stock as ~~((may be))~~ is necessary to permit them to qualify as ~~((such))~~ directors.

(4) A "custodian bank" is ~~((any))~~ a bank or trust company ~~((which))~~ that is supervised and examined by state or federal authority having supervision over banks and ~~((which))~~ is acting as custodian for a clearing corporation.

(5) Other definitions applying to this Article or to specified Parts thereof and the sections in which they appear are:

"Adverse claim". RCW ~~((62A.8-301))~~ 62A.8-302.

"Bona fide purchaser". RCW 62A.8-302.

"Broker". RCW 62A.8-303.

"Debtor". RCW 62A.9-105.

"Financial intermediary". RCW 62A.8-313.

"Guarantee of the signature". RCW 62A.8-402.

"Initial transaction statement". RCW 62A.8-408.

"Instruction". RCW 62A.8-308.

"Intermediary bank". RCW 62A.4-105.

"Issuer". RCW 62A.8-201.

"Overissue". RCW 62A.8-104.

"Secured party". RCW 62A.9-105.

"Security agreement". RCW 62A.9-105.

(6) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Sec. 2. Section 8-103, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-103 are each amended to read as follows:

ISSUER'S LIEN. A lien upon a security in favor of an issuer thereof is valid against a purchaser only if:

(a) the security is certificated and the right of the issuer to ((such)) the lien is noted conspicuously ((on the security;)) thereon; or

(b) the security is uncertificated and a notation of the right of the issuer to the lien is contained in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

Sec. 3. Section 8-104, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-104 are each amended to read as follows:

EFFECT OF OVERISSUE; "OVERISSUE". (1) The provisions of this Article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue; but if:

(a) ((if)) an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase ((and deliver such a) the security ((to)) for him and either to deliver a certificated security or to register the transfer of an uncertificated security to him, against surrender of ((the)) any certificated security((; if any, which)) he holds; or

(b) ((if)) a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

(2) "Overissue" means the issue of securities in excess of the amount ((which)) the issuer has corporate power to issue.

Sec. 4. Section 8-105, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-105 are each amended to read as follows:

CERTIFICATED SECURITIES NEGOTIABLE; STATEMENTS AND INSTRUCTIONS NOT NEGOTIABLE; PRESUMPTIONS. (1) Certificated securities governed by this Article are negotiable instruments.

(2) Statements (RCW 62A.8-408), notices, or the like, sent by the issuer of uncertificated securities and instructions (RCW 62A.8-308) are neither negotiable instruments nor certificated securities.

(3) In any action on a security;

(a) unless specifically denied in the pleadings, each signature on ((the)) a certificated security ((or)), in a necessary indorsement, on an initial transaction statement, or on an instruction, is admitted;

(b) ((when)) if the effectiveness of a signature is put in issue, the burden of establishing it is on the party claiming under the signature, but the signature is presumed to be genuine or authorized;

(c) ((when)) if signatures on a certificated security are admitted or established, production of the ((instrument)) security entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; ((and))

(d) if signatures on an initial transaction statement are admitted or established, the facts stated in the statement are presumed to be true as of the time of its issuance; and

(c) after it is shown that a defense or defect exists, the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (RCW 62A.8-202).

Sec. 5. Section 8-106, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-106 are each amended to read as follows:

APPLICABILITY. The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the validity of a security, the effectiveness of registration by the issuer, and the rights and duties of the issuer with respect to:

(a) registration of transfer ((are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer)) of a certificated security;

(b) registration of transfer, pledge, or release of an uncertificated security; and

(c) sending of statements of uncertificated securities.

Sec. 6. Section 8-107, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-107 are each amended to read as follows:

SECURITIES ((DELIVERABLE)) TRANSFERABLE; ACTION FOR PRICE. (1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to ((deliver)) transfer securities may ((deliver)) transfer any certificated security of the specified issue in bearer form or registered in the name of the transferee, or indorsed to him or in blank, or he may transfer an equivalent uncertificated security to the transferee or a person designated by the transferee.

(2) ((When)) If the buyer fails to pay the price as it comes due under a contract of sale, the seller may recover the price of:

(a) ((of)) certificated securities accepted by the buyer; ((and))

(b) ((of)) uncertificated securities that have been transferred to the buyer or a person designated by the buyer; and

(c) other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.

NEW SECTION. Sec. 7. A new section is added to Article 8 of Title 62A RCW to read as follows:

REGISTRATION OF PLEDGE AND RELEASE OF UNCERTIFICATED SECURITIES. A security interest in an uncertificated security may be evidenced by the registration of pledge to the secured party or a person designated by him. There can be no more than one registered pledge of an uncertificated security at any time. The registered owner of an uncertificated security is the person in whose name the security is registered, even if the security is subject to a registered pledge. The rights of a registered pledgee of an uncertificated security under this Article are terminated by the registration of release.

PART 2
ISSUE—ISSUER

Sec. 8. Section 8-201, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-201 are each amended to read as follows:

"ISSUER". (1) With respect to obligations on or defenses to a security, "issuer" includes a person who:

(a) places or authorizes the placing of his name on a certificated security (otherwise than as authenticating trustee, registrar, transfer agent, or the like) to evidence that it represents a share, participation, or other interest in his property or in an enterprise, or to evidence his duty to perform an obligation ~~((evidenced))~~ represented by the certificated security; ~~((or))~~

(b) creates shares, participations or other interests in his property or in an enterprise or undertakes obligations, which shares, participations, interests, or obligations are uncertificated securities;

(c) directly or indirectly creates fractional interests in his rights or property, which fractional interests are ~~((evidenced))~~ represented by certificated securities; or

~~((c))~~ (d) becomes responsible for or in place of any other person described as an issuer in this section.

(2) With respect to obligations on or defenses to a security, a guarantor is an issuer to the extent of his guaranty, whether or not his obligation is noted on ~~((the))~~ a certificated security or on statements of uncertificated securities sent pursuant to RCW 62A.8-408.

(3) With respect to registration of transfer, pledge, or release (Part 4 of this Article), "issuer" means a person on whose behalf transfer books are maintained.

Sec. 9. Section 8-202, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-202 are each amended to read as follows:

ISSUER'S RESPONSIBILITY AND DEFENSES; NOTICE OF DEFECT OR DEFENSE. (1) Even against a purchaser for value and without notice, the terms of a security include:

(a) if the security is certificated, those stated on the security;

(b) if the security is uncertificated, those contained in the initial transaction statement sent to such purchaser, or if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or registered pledgee; and

(c) those made part of the security by reference, on the certificated security or in the initial transaction statement, to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order or the like, to the extent that the terms ~~((so))~~ referred to do not conflict with the ~~((stated))~~ terms stated on the certificated security or contained in the statement. ~~((Such))~~ A reference under this paragraph does not of itself charge a purchaser for value with notice of a defect going to the validity

of the security, even though the certificated security or statement expressly states that a person accepting it admits ~~((such))~~ notice.

(2) ~~((a))~~ A certificated security in the hands of a purchaser for value or an uncertificated security as to which an initial transaction statement has been sent to a purchaser for value, other than ~~((one))~~ a security issued by a government or governmental agency or unit, even though issued with a defect going to its validity, is valid ~~((in the hands of a))~~ with respect to the purchaser ~~((for value and))~~ if he is without notice of the particular defect unless the defect involves a violation of constitutional provisions, in which case the security is valid ~~((in the hands of))~~ with respect to a subsequent purchaser for value and without notice of the defect.

~~((b))~~ ~~The rule of subparagraph (a))~~ This subsection applies to an issuer ~~((which))~~ that is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as ~~((otherwise))~~ provided in the case of certain unauthorized signatures ~~((on issue))~~ (RCW 62A.8-205), lack of genuineness of a certificated security or an initial transaction statement is a complete defense, even against a purchaser for value and without notice.

(4) All other defenses of the issuer of a certificated or uncertificated security, including nondelivery and conditional delivery of ~~((the))~~ a certificated security, are ineffective against a purchaser for value who has taken without notice of the particular defense.

(5) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security ~~((which))~~ that is the subject of the contract or in the plan or arrangement pursuant to which ~~((such))~~ the security is to be issued or distributed.

Sec. 10. Section 8-203, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-203 are each amended to read as follows:

STALENESS AS NOTICE OF DEFECTS OR DEFENSES. (1) After an act or event ~~((which creates))~~ creating a right to immediate performance of the principal obligation ~~((evidenced))~~ represented by ~~((the))~~ a certificated security or ~~((which))~~ that sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer if:

(a) ~~((if))~~ the act or event is one requiring the payment of money ~~((or))~~, the delivery of certificated securities, the registration of transfer of

uncertificated securities, or ~~((both))~~ any of these on presentation or surrender of the certificated security ~~((and such))~~, the funds or securities are available on the date set for payment or exchange, and he takes the security more than one year after that date; and

(b) ~~((if))~~ the act or event is not covered by paragraph (a) and he takes the security more than ~~((two))~~ 2 years after the date set for surrender or presentation or the date on which ~~((such))~~ performance became due.

(2) A call ~~((which))~~ that has been revoked is not within subsection (1).

Sec. 11. Section 8-204, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-204 are each amended to read as follows:

EFFECT OF ISSUER'S RESTRICTIONS ON TRANSFER. ~~((Un- less noted conspicuously on the security))~~ A restriction on transfer of a security imposed by the issuer, even though otherwise lawful, is ineffective ~~((except))~~ against ~~((a))~~ any person ~~((with))~~ without actual knowledge of it unless:

(a) the security is certificated and the restriction is noted conspicuously thereon; or

(b) the security is uncertificated and a notation of the restriction is contained in the initial transaction statement sent to the person or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

Sec. 12. Section 8-205, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-205 are each amended to read as follows:

EFFECT OF UNAUTHORIZED SIGNATURE ON ~~((ISSUE))~~ CERTIFICATED SECURITY OR INITIAL TRANSACTION STATEMENT. An unauthorized signature placed on a certificated security prior to or in the course of issue or placed on an initial transaction statement is ineffective ~~((except that))~~, but the signature is effective in favor of a purchaser for value ~~((and))~~ of the certificated security or a purchaser for value of an uncertificated security to whom such initial transaction statement has been sent, if the purchaser is without notice of the lack of authority ~~((if))~~ and the signing has been done by:

(a) an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security ~~((or))~~, of similar securities, or of initial transaction statements or ~~((their))~~ the immediate preparation for signing of any of them; or

(b) an employee of the issuer, or of any of the foregoing, entrusted with responsible handling of the security or initial transaction statement.

Sec. 13. Section 8-206, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-206 are each amended to read as follows:

COMPLETION OR ALTERATION OF ((INSTRUMENT)) CERTIFICATED SECURITY OR INITIAL TRANSACTION STATEMENT. (1) ((Where)) If a certificated security contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(a) any person may complete it by filling in the blanks as authorized; and

(b) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of ((such)) the incorrectness.

(2) A complete certificated security ((which)) that has been improperly altered, even though fraudulently, remains enforceable, but only according to its original terms.

(3) If an initial transaction statement contains the signatures necessary to its validity, but is incomplete in any other respect:

(a) any person may complete it by filling in the blanks as authorized; and

(b) even though the blanks are incorrectly filled in, the statement as completed is effective in favor of the person to whom it is sent if he purchased the security referred to therein for value and without notice of the incorrectness.

(4) A complete initial transaction statement that has been improperly altered, even though fraudulently, is effective in favor of a purchaser to whom it has been sent, but only according to its original terms.

Sec. 14. Section 8-207, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-207 are each amended to read as follows:

RIGHTS AND DUTIES OF ISSUER WITH RESPECT TO REGISTERED OWNERS AND REGISTERED PLEDGEEES. (1) Prior to due presentment for registration of transfer of a certificated security in registered form, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.

(2) Subject to the provisions of subsections (3), (4), and (6), the issuer or indenture trustee may treat the registered owner of an uncertificated security as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.

(3) The registered owner of an uncertificated security that is subject to a registered pledge is not entitled to registration of transfer prior to the due presentment to the issuer of a release instruction. The exercise of conversion rights with respect to a convertible uncertificated security is a transfer within the meaning of this section.

(4) Upon due presentment of a transfer instruction from the registered pledgee of an uncertificated security, the issuer shall:

(a) register the transfer of the security to the new owner free of pledge, if the instruction specifies a new owner (who may be the registered pledgee) and does not specify a pledgee;

(b) register the transfer of the security to the new owner subject to the interest of the existing pledgee, if the instruction specifies a new owner and the existing pledgee; or

(c) register the release of the security from the existing pledge and register the pledge of the security to the other pledgee, if the instruction specifies the existing owner and another pledgee.

(5) Continuity of perfection of a security interest is not broken by registration of transfer under subsection (4)(b) or by registration of release and pledge under subsection (4)(c), if the security interest is assigned.

(6) If an uncertificated security is subject to a registered pledge:

(a) any uncertificated securities issued in exchange for or distributed with respect to the pledged security shall be registered subject to the pledge;

(b) any certificated securities issued in exchange for or distributed with respect to the pledged security shall be delivered to the registered pledgee; and

(c) any money paid in exchange for or in redemption of part or all of the security shall be paid to the registered pledgee.

(7) Nothing in this Article shall be construed to affect the liability of the registered owner of a security for calls, assessments, or the like.

Sec. 15. Section 8-208, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-208 are each amended to read as follows:

EFFECT OF SIGNATURE OF AUTHENTICATING TRUSTEE, REGISTRAR, OR TRANSFER AGENT. (1) A person placing his signature upon a certificated security or an initial transaction statement as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent, if the purchaser is without notice of the particular defect, that:

(a) the certificated security or initial transaction statement is genuine;
((and))

(b) his own participation in the issue or registration of the transfer, pledge, or release of the security is within his capacity and within the scope of the ((authorization)) authority received by him from the issuer; and

(c) he has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects.

PART 3
 ((PURCHASE)) TRANSFER

Sec. 16. Section 8-301, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-301 are each amended to read as follows:

~~RIGHTS ACQUIRED BY PURCHASER((;"ADVERSE CLAIM"; TITLE ACQUIRED BY BONA FIDE PURCHASER)).~~ (1) Upon ~~((delivery))~~ transfer of a security to a purchaser (RCW 62A.8-313), the purchaser acquires the rights in the security which his transferor had or had actual authority to convey ~~((except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser. "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.~~

~~(2) A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim.~~

~~(3)) unless the purchaser's rights are limited by RCW 62A.8-302(4).~~

(2) A ((purchaser)) transferee of a limited interest acquires rights only to the extent of the interest ((purchased)) transferred. The creation or release of a security interest in a security is the transfer of a limited interest in that security.

Sec. 17. Section 8-302, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-302 are each amended to read as follows:

"BONA FIDE PURCHASER"; "ADVERSE CLAIM"; TITLE ACQUIRED BY BONA FIDE PURCHASER. (1) A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim;

(a) who takes delivery of a certified security in bearer form or ((of one)) in registered form, issued ((to him)) or indorsed to him or in blank;

(b) to whom the transfer, pledge or release of an uncertificated security is registered on the books of the issuer; or

(c) to whom a security is transferred under the provisions of paragraph (c), (d)(i), or (g) of RCW 62A.8-313(1).

(2) "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

(3) A bona fide purchaser in addition to acquiring the rights of a purchaser (RCW 62A.8-301) also acquires his interest in the security free of any adverse claim.

(4) Notwithstanding RCW 62A.8-301(1), the transferee of a particular certified security who has been a party to any fraud or illegality affecting the security, or who as a prior holder of that certified security had notice of an adverse claim, cannot improve his position by taking from a bona fide purchaser.

Sec. 18. Section 8-303, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-303 are each amended to read as follows:

"BROKER". "Broker" means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, ~~((or))~~ buys a security from, or sells a security to, a customer. Nothing in this Article determines the capacity in which a person acts for purposes of any other statute or rule to which ~~((such))~~ the person is subject.

Sec. 19. Section 8-304, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-304 are each amended to read as follows:

NOTICE TO PURCHASER OF ADVERSE CLAIMS. (1) A purchaser (including a broker for the seller or buyer, but excluding an intermediary bank) of a certificated security is charged with notice of adverse claims if:

(a) the security, whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

(2) A purchaser (including a broker for the seller or buyer, but excluding an intermediary bank) to whom the transfer, pledge, or release of an uncertificated security is registered is charged with notice of adverse claims as to which the issuer has a duty under RCW 62A.8-403(4) at the time of registration and which are noted in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

(3) The fact that the purchaser (including a broker for the seller or buyer) of a certificated or uncertificated security has notice that the security is held for a third person or is registered in the name of or indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute constructive notice of adverse claims. ~~((If;))~~ However, if the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or ~~((that))~~ the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

Sec. 20. Section 8-305, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-305 are each amended to read as follows:

STALENESS AS NOTICE OF ADVERSE CLAIMS. An act or event ~~((which))~~ that creates a right to immediate performance of the principal obligation ~~((evidenced))~~ represented by ~~((the))~~ a certificated security or ~~((which))~~ sets a date on or after which ~~((the))~~ a certificated security is to

be presented or surrendered for redemption or exchange does not ~~((of))~~ itself constitute any notice of adverse claims except in the case of a ~~((purchase))~~ transfer:

(a) after one year from any date set for ~~((such))~~ presentment or surrender for redemption or exchange; or

(b) after ~~((six))~~ 6 months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.

Sec. 21. Section 8-306, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-306 are each amended to read as follows:

WARRANTIES ON PRESENTMENT AND TRANSFER OF CERTIFICATED SECURITIES; WARRANTIES OF ORIGINATORS OF INSTRUCTIONS. (1) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment, or exchange. But, a purchaser for value and without notice of adverse claims who receives a new, reissued, or re-registered certificated security on registration of transfer or receives an initial transaction statement confirming the registration of transfer of an equivalent uncertificated security to him warrants only that he has no knowledge of any unauthorized signature (RCW 62A.8-311) in a necessary indorsement.

(2) A person by transferring a certificated security to a purchaser for value warrants only that:

(a) his transfer is effective and rightful; ~~((and))~~

(b) the security is genuine and has not been materially altered; and

(c) he knows of no fact which might impair the validity of the security.

(3) ~~((Where))~~ If a certificated security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against ((such)) delivery, the intermediary by ((such)) delivery warrants only his own good faith and authority, even though he has purchased or made advances against the claim to be collected against the delivery.

(4) A pledgee or other holder for security who redelivers ~~((the))~~ a certificated security received, or after payment and on order of the debtor delivers that security to a third person, makes only the warranties of an intermediary under subsection (3).

(5) A person who originates an instruction warrants to the issuer that:

(a) he is an appropriate person to originate the instruction; and

(b) at the time the instruction is presented to the issuer he will be entitled to the registration of transfer, pledge, or release.

(6) A person who originates an instruction warrants to any person specially guaranteeing his signature (RCW 62A.8-312(3)) that:

(a) he is an appropriate person to originate the instruction; and

(b) at the time the instruction is presented to the issuer

(i) he will be entitled to the registration of transfer, pledge, or release; and

(ii) the transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(7) A person who originates an instruction warrants to a purchaser for value and to any person guaranteeing the instruction (RCW 62A.8-312(6)) that:

(a) he is an appropriate person to originate the instruction;

(b) the uncertificated security referred to therein is valid; and

(c) at the time the instruction is presented to the issuer

(i) the transferor will be entitled to the registration of transfer, pledge, or release;

(ii) the transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction; and

(iii) the requested transfer, pledge, or release will be rightful.

(8) If a secured party is the registered pledgee or the registered owner of an uncertificated security, a person who originates an instruction of release or transfer to the debtor or, after payment and on order of the debtor, a transfer instruction to a third person, warrants to the debtor or the third person only that he is an appropriate person to originate the instruction and at the time the instruction is presented to the issuer, the transferor will be entitled to the registration of release or transfer. If a transfer instruction to a third person who is a purchaser for value is originated on order of the debtor, the debtor makes to the purchaser the warranties of paragraphs (b), (c)(ii) and (c)(iii) of subsection (7).

(9) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants only that:

(a) his transfer is effective and rightful; and

(b) the uncertificated security is valid.

(10) A broker gives to his customer and to the issuer and a purchaser the applicable warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer.

Sec. 22. Section 8-307, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-307 are each amended to read as follows:

EFFECT OF DELIVERY WITHOUT INDORSEMENT; RIGHT TO COMPEL INDORSEMENT. (~~Where~~) If a certificated security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied(;) but against the transferor, the transfer is

complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

Sec. 23. Section 8-308, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-308 are each amended to read as follows:

~~((INDORSEMENT, HOW MADE, SPECIAL INDORSEMENT, INDORSER NOT A GUARANTOR, PARTIAL ASSIGNMENT))~~ INDORSEMENTS; INSTRUCTIONS. (1) An indorsement of a certificated security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or ((when the)) his signature ((of such person)) is written without more upon the back of the security.

(2) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies ~~((the person))~~ to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank indorsement into a special indorsement.

(3) An indorsement purporting to be only of part of a certificated security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(4) An "instruction" is an order to the issuer of an uncertificated security requesting that the transfer, pledge, or release from pledge of the uncertificated security specified therein be registered.

(5) An instruction originated by an appropriate person is:

(a) a writing signed by an appropriate person; or

(b) a communication to the issuer in any form agreed upon in a writing signed by the issuer and an appropriate person.

If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed even though it has been completed incorrectly.

(6) "An appropriate person" in subsection (1) means ((~~the~~)) the person specified by the certificated security or by special indorsement to be entitled to the security((~~or~~)).

(7) "An appropriate person" in subsection (5) means:

(a) for an instruction to transfer or pledge an uncertificated security which is then not subject to a registered pledge, the registered owner; or

(b) for an instruction to transfer or release an uncertificated security which is then subject to a registered pledge, the registered pledgee.

(8) In addition to the persons designated in subsections (6) and (7), "an appropriate person" in subsections (1) and (5) includes:

((~~where~~)) (a) if the person ((~~so specified~~)) designated is described as a fiduciary but is no longer serving in the described capacity,((~~or~~)) either that person or his successor; ((~~or~~

~~(c) where))~~ (b) if the ((security or indorsement so specifies)) persons designated are described as more than one person as fiduciaries and one or more are no longer serving in the described capacity,((=)) the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified; ((or

~~(d) where))~~ (c) if the person ((so specified)) designated is an individual and is without capacity to act by virtue of death, incompetence, infancy, or otherwise,((=)) his executor, administrator, guardian, or like fiduciary; ((or

~~(c) where))~~ (d) if the ((security or indorsement so specifies)) persons designated are described as more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign,((=)) the survivor or survivors; ((or

~~(f))~~ (e) a person having power to sign under applicable law or controlling instrument; ((or)) and

~~((g))~~ (f) to the extent that the person designated or any of the foregoing persons may act through an agent,((=)) his authorized agent.

~~((4))~~ (9) Unless otherwise agreed, the indorser of a certificated security by his indorsement or the originator of an instruction by his origination assumes no obligation that the security will be honored by the issuer but only the obligations provided in RCW 62A.8-306.

~~((5) An indorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.~~

~~(6))~~ (10) Whether the person signing is appropriate is determined as of the date of signing and an indorsement made by or an instruction originated by ((such a person)) him does not become unauthorized for the purposes of this Article by virtue of any subsequent change of circumstances.

~~((7))~~ (11) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, pledge, or release, does not render his indorsement or an instruction originated by him unauthorized for the purposes of this Article.

Sec. 24. Section 8-309, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-309 are each amended to read as follows:

EFFECT OF INDORSEMENT WITHOUT DELIVERY. An indorsement of a certificated security, whether special or in blank, does not constitute a transfer until delivery of the certificated security on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificated security.

Sec. 25. Section 8-310, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-310 are each amended to read as follows:

INDORSEMENT OF CERTIFICATED SECURITY IN BEARER FORM. An indorsement of a certificated security in bearer form may give

notice of adverse claims (RCW 62A.8-304) but does not otherwise affect any right to registration the holder (~~(may)~~) possesses.

Sec. 26. Section 8-311, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-311 are each amended to read as follows:

EFFECT OF UNAUTHORIZED INDORSEMENT OR INSTRUCTION. Unless the owner or pledgee has ratified an unauthorized indorsement or instruction or is otherwise precluded from asserting its ineffectiveness:

(a) he may assert its ineffectiveness against the issuer or any purchaser, other than a purchaser for value and without notice of adverse claims, who has in good faith received a new, reissued, or re-registered certificated security on registration of transfer or received an initial transaction statement confirming the registration of transfer, pledge, or release of an equivalent uncertificated security to him; and

(b) an issuer who registers the transfer of a certificated security upon the unauthorized indorsement or who registers the transfer, pledge, or release of an uncertificated security upon the unauthorized instruction is subject to liability for improper registration (RCW 62A.8-404).

Sec. 27. Section 8-312, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-312 are each amended to read as follows:

EFFECT OF GUARANTEEING SIGNATURE ((~~OR~~)), INDORSEMENT OR INSTRUCTION. (1) Any person guaranteeing a signature of an indorser of a certificated security warrants that at the time of signing:

(a) the signature was genuine; (~~and~~)

(b) the signer was an appropriate person to indorse (RCW 62A.8-308); and

(c) the signer had legal capacity to sign. (~~But the guarantor does not otherwise warrant the rightfulness of the particular transfer.~~)

(2) Any person guaranteeing a signature of the originator of an instruction warrants that at the time of signing:

(a) the signature was genuine;

(b) the signer was an appropriate person to originate the instruction (RCW 62A.8-308) if the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security was, in fact, the registered owner or registered pledgee of such security, as to which fact the signature guarantor makes no warranty;

(c) the signer had legal capacity to sign; and

(d) the taxpayer identification number, if any, appearing on the instruction as that of the registered owner or registered pledgee was the taxpayer identification number of the signer or of the owner or pledgee for whom the signer was acting.

(3) Any person specially guaranteeing the signature of the originator of an instruction makes not only the warranties of a signature guarantor (subsection (2)) but also warrants that at the time the instruction is presented to the issuer:

(a) the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security will be the registered owner or registered pledgee; and

(b) the transfer, pledge, or release of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(4) The guarantor under subsections (1) and (2) or the special guarantor under subsection (3) does not otherwise warrant the rightfulness of the particular transfer, pledge, or release.

(5) Any person ((may guarantee)) guaranteeing an indorsement of a certificated security ((and by so doing warrants not only the signature (subsection 1))) makes not only the warranties of a signature guarantor under subsection (1) but also warrants the rightfulness of the particular transfer in all respects. ((But no issuer may require a guarantee of indorsement as a condition to registration of transfer.

(3)) (6) Any person guaranteeing an instruction requesting the transfer, pledge, or release of an uncertificated security makes not only the warranties of a special signature guarantor under subsection (3) but also warrants the rightfulness of the particular transfer, pledge, or release in all respects.

(7) No issuer may require a special guarantee of signature (subsection (3)), a guarantee of indorsement (subsection (5)), or a guarantee of instruction (subsection (6)) as a condition to registration of transfer, pledge, or release.

(8) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee, and the guarantor is liable to ((such)) the person for any loss resulting from breach of the warranties.

Sec. 28. Section 8-313, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-313 are each amended to read as follows:

WHEN ((DELIVERY)) TRANSFER TO ((THE)) PURCHASER OCCURS((; PURCHASER'S BROKER AS HOLDER)); FINANCIAL INTERMEDIARY AS BONA FIDE PURCHASER; "FINANCIAL INTERMEDIARY". (1) ((Delivery)) Transfer of a security or a limited interest (including a security interest) therein to a purchaser occurs ((when)) only:

(a) at the time he or a person designated by him acquires possession of a certificated security; ((or))

(b) ((his broker)) at the time the transfer, pledge, or release of an uncertificated security is registered to him or a person designated by him;

(c) at the time his financial intermediary acquires possession of a certificated security specially indorsed to or issued in the name of the purchaser; ((or

(~~e~~) his broker)) (d) at the time a financial intermediary, not a clearing corporation, sends him confirmation of the purchase and also by book entry or otherwise identifies ((~~a specific security in the broker's possession~~)) as belonging to the purchaser((~~; or~~

(~~d~~)) (i) a specific certificated security in the financial intermediary's possession;

(ii) a quantity of securities that constitute or are part of a fungible bulk of certificated securities in the financial intermediary's possession or of uncertificated securities registered in the name of the financial intermediary;
or

(iii) a quantity of securities that constitute or are part of a fungible bulk of securities shown on the account of the financial intermediary on the books of another financial intermediary;

(e) with respect to an identified certificated security to be delivered while still in the possession of a third person ((when)), not a financial intermediary, at the time that person acknowledges that he holds for the purchaser; ((or

(~~e~~)) (f) with respect to a specific uncertificated security the pledge or transfer of which has been registered to a third person, not a financial intermediary, at the time that person acknowledges that he holds for the purchaser;

(g) at the time appropriate entries to the account of the purchaser or a person designated by him on the books of a clearing corporation are made under RCW 62A.8-320;

(h) with respect to the transfer of a security interest where the debtor has signed a security agreement containing a description of the security, at the time a written notification, which, in the case of the creation of the security interest, is signed by the debtor (which may be a copy of the security agreement) or which, in the case of the release or assignment of the security interest created pursuant to this paragraph, is signed by the secured party, is received by

(i) a financial intermediary on whose books the interest of the transferor in the security appears;

(ii) a third person, not a financial intermediary, in possession of the security, if it is certificated;

(iii) a third person, not a financial intermediary, who is the registered owner of the security, if it is uncertificated and not subject to a registered pledge; or

(iv) a third person, not a financial intermediary, who is the registered pledgee of the security, if it is uncertificated and subject to a registered pledge;

(i) with respect to the transfer of a security interest where the transferor has signed a security agreement containing a description of the security, at the time new value is given by the secured party; or

(j) with respect to the transfer of a security interest where the secured party is a financial intermediary and the security has already been transferred to the financial intermediary under paragraphs (a), (b), (c), (d), or (g), at the time the transferor has signed a security agreement containing a description of the security and value is given by the secured party.

(2) ~~The purchaser is the owner of a security held for him by ((his broker, but is not the holder except as specified in subparagraphs (b), (c) and (e) of subsection (1). Where a security is part of a fungible bulk)) a financial intermediary, but cannot be a bona fide purchaser of a security so held except in the circumstances specified in paragraphs (c), (d)(i), and (g) of subsection (1). If a security so held is part of a fungible bulk, as in the circumstances specified in paragraphs (d)(ii) and (d)(iii) of subsection (1), the purchaser is the owner of a proportionate property interest in the fungible bulk.~~

(3) ~~Notice of an adverse claim received by the ((broker)) financial intermediary or by the purchaser after the ((broker)) financial intermediary takes delivery of a certificated security as a holder for value or after the transfer, pledge, or release of an uncertificated security has been registered free of the claim to a financial intermediary who has given value is not effective either as to the ((broker)) financial intermediary or as to the purchaser. However, as between the ((broker)) financial intermediary and the purchaser the purchaser may demand ((delivery)) transfer of an equivalent security as to which no notice of ((an)) adverse claim has been received.~~

(4) A "financial intermediary" is a bank, broker, clearing corporation or other person (or the nominee of any of them) which in the ordinary course of its business maintains security accounts for its customers and is acting in that capacity. A financial intermediary may have a security interest in securities held in account for its customer.

Sec. 29. Section 8-314, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-314 are each amended to read as follows:

DUTY TO ((DELIVER)) TRANSFER, WHEN COMPLETED. (1) Unless otherwise agreed ((where)), if a sale of a security is made on an exchange or otherwise through brokers:

(a) the selling customer fulfills his duty to ((deliver when he places such a)) transfer at the time he:

(i) places a certificated security in the possession of the selling broker or of a person designated by the broker ((or if requested causes an acknowledgment to be made to the selling broker that it is held for him; and));

(ii) causes an uncertificated security to be registered in the name of the selling broker or a person designated by the broker;

(iii) if requested, causes an acknowledgment to be made to the selling broker that a certificated or uncertificated security is held for the broker; or

(iv) places in the possession of the selling broker or of a person designated by the broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within 30 days thereafter; and

(b) the selling broker, including a correspondent broker acting for a selling customer, fulfills his duty to ~~((deliver by placing the security or a like))~~ transfer at the time he:

(i) places a certificated security in the possession of the buying broker or a person designated by ((him or by effecting)) the buying broker;

(ii) causes an uncertificated security to be registered in the name of the buying broker or a person designated by the buying broker;

(iii) places in the possession of the buying broker or of a person designated by the buying broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within 30 days thereafter; or

(iv) effects clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as ~~((otherwise))~~ provided in this section and unless otherwise agreed, a transferor's duty to ~~((deliver))~~ transfer a security under a contract of purchase is not fulfilled until he:

(a) places ((the)) a certificated security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by ((him or at the purchaser's request)) the purchaser;

(b) causes an uncertificated security to be registered in the name of the purchaser or a person designated by the purchaser; or

(c) if the purchaser requests, causes an acknowledgment to be made to the purchaser that ((it)) a certificated or uncertificated security is held for ((him)) the purchaser.

(3) Unless made on an exchange, a sale to a broker purchasing for his own account is within ~~((this))~~ subsection (2) and not within subsection (1).

Sec. 30. Section 8-315, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-315 are each amended to read as follows:

ACTION AGAINST ((PURCHASER)) TRANSFEREE BASED UPON WRONGFUL TRANSFER. (1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, ~~((may))~~ as against anyone except a bona fide purchaser, may:

(a) reclaim possession of the certificated security ((or)) wrongfully transferred;

(b) obtain possession of any new certificated security ((evidencing)) representing all or part of the same rights ((or));

(c) compel the origination of an instruction to transfer to him or a person designated by him an uncertificated security constituting all or part of the same rights; or

(d) have damages.

(2) If the transfer is wrongful because of an unauthorized indorsement of a certificated security, the owner may also reclaim or obtain possession of the security or a new certificated security, even from a bona fide purchaser, if the ineffectiveness of the purported indorsement can be asserted against him under the provisions of this Article on unauthorized indorsements (RCW 62A.8-311).

(3) The right to obtain or reclaim possession of a certificated security or to compel the origination of a transfer instruction may be specifically enforced and ~~((its))~~ the transfer of a certificated or uncertificated security enjoined and ~~((the))~~ a certificated security impounded pending the litigation.

Sec. 31. Section 8-316, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-316 are each amended to read as follows:

PURCHASER'S RIGHT TO REQUISITES FOR REGISTRATION OF TRANSFER, PLEDGE, OR RELEASE ON BOOKS. Unless otherwise agreed, the transferor ~~((must))~~ of a certificated security or the transferor, pledgor, or pledgee of an uncertificated security on due demand must supply his purchaser with any proof of his authority to transfer, pledge, or release or with any other requisite ~~((which may be))~~ necessary to obtain registration of the transfer, pledge, or release of the security; but if the transfer, pledge, or release is not for value, a transferor, pledgor, or pledgee need not do so unless the purchaser furnishes the necessary expenses. Failure within a reasonable time to comply with a demand made ~~((within a reasonable time))~~ gives the purchaser the right to reject or rescind the transfer, pledge, or release.

Sec. 32. Section 8-317, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-317 are each amended to read as follows:

~~((ATTACHMENT OR LEVY UPON SECURITY))~~ CREDITORS' RIGHTS. (1) Subject to the exceptions in subsections (3) and (4), no attachment or levy upon a certificated security or any share or other interest ~~((evidenced))~~ represented thereby which is outstanding ~~((shall be))~~ is valid until the security is actually seized by the officer making the attachment or levy, but a certificated security which has been surrendered to the issuer may be ~~((attached or levied upon at the source))~~ reached by a creditor by legal process at the issuer's chief executive office in the United States.

(2) An uncertificated security registered in the name of the debtor may not be reached by a creditor except by legal process at the issuer's chief executive office in the United States.

(3) The interest of a debtor in a certificated security that is in the possession of a secured party not a financial intermediary or in an uncertificated security registered in the name of a secured party not a financial intermediary (or in the name of a nominee of the secured party) may be reached by a creditor by legal process upon the secured party.

(4) The interest of a debtor in a certificated security that is in the possession of or registered in the name of a financial intermediary or in an uncertificated security registered in the name of a financial intermediary may be reached by a creditor by legal process upon the financial intermediary on whose books the interest of the debtor appears.

(5) Unless otherwise provided by law, a creditor's lien upon the interest of a debtor in a security obtained pursuant to subsection (3) or (4) is not a restraint on the transfer of the security, free of the lien, to a third party for new value; but in the event of a transfer, the lien applies to the proceeds of the transfer in the hands of the secured party or financial intermediary, subject to any claims having priority.

~~((2))~~ (6) A creditor whose debtor is the owner of a security (~~shall be~~) is entitled to (~~such~~) aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching (~~such~~) the security or in satisfying the claim by means (~~thereof as is~~) allowed at law or in equity in regard to property (~~which~~) that cannot readily be (~~attached or levied upon~~) reached by ordinary legal process.

Sec. 33. Section 8-318, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-318 are each amended to read as follows:

NO CONVERSION BY GOOD FAITH (~~DELIVERY~~) CONDUCT. An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling, or otherwise dealing with securities) has received certificated securities and sold, pledged, or delivered them or has sold or caused the transfer or pledge of uncertificated securities over which he had control according to the instructions of his principal, is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right (~~to dispose of them~~) so to deal with the securities.

Sec. 34. Section 8-319, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-319 are each amended to read as follows:

STATUTE OF FRAUDS. A contract for the sale of securities is not enforceable by way of action or defense unless:

(a) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker, sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price; (~~or~~)

(b) delivery of (~~the~~) a certificated security or transfer instruction has been accepted, or transfer of an uncertificated security has been registered and the transferee has failed to send written objection to the issuer within

10 days after receipt of the initial transaction statement confirming the registration, or payment has been made, but the contract is enforceable under this provision only to the extent of ((such)) the delivery, registration, or payment; ((or))

(c) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under paragraph (a) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within ~~((ten))~~ 10 days after its receipt; or

(d) the party against whom enforcement is sought admits in his pleading, testimony, or otherwise in court that a contract was made for the sale of a stated quantity of described securities at a defined or stated price.

Sec. 35. Section 8-320, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-320 are each amended to read as follows:

TRANSFER OR PLEDGE WITHIN ((A)) CENTRAL DEPOSITORY SYSTEM. (1) In addition to other methods, a transfer, pledge, or release of a security or any interest therein may be effected by the making of appropriate entries on the books of a clearing corporation reducing the account of the transferor, pledgor, or pledgee and increasing the account of the transferee, pledgee, or pledgor by the amount of the obligation, or the number of shares or rights transferred, pledged, or released, if the security is shown on the account of a transferor, pledgor, or pledgee on the books of the clearing corporation; is subject to the control of the clearing corporation; and

(a) if ((a security)) certificated,

~~((a))~~ (i) is in the custody of ((a)) the clearing corporation ((or of)), another clearing corporation, a custodian bank or a nominee of ((either subject to the instructions of the clearing corporation)) any of them; and

~~((b))~~ (ii) is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation ((or)), a custodian bank, or a nominee of ((either; and

~~(c) is shown on the account of a transferor or pledgor on the books of the clearing corporation;~~

~~then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged)) any of them; or~~

(b) if uncertificated, is registered in the name of the clearing corporation, another clearing corporation, a custodian bank, or a nominee of any of them.

(2) Under this section entries may be made with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to

a quantity of a particular security without reference to the name of the registered owner, certificate or bond number, or the like, and, in appropriate cases, may be on a net basis taking into account other transfers ((or)), pledges, or releases of the same security.

(3) A transfer ((or pledge)) under this section ((has the effect of a delivery of a security in bearer form or duly indorsed in blank (RCW 62A.8-301) representing the amount of the obligation or the number of shares or rights transferred or pledged)) is effective (RCW 62A.8-313) and the purchaser acquires the rights of the transferor (RCW 62A.8-301). A pledge or release under this section is the transfer of a limited interest. If a pledge or the creation of a security interest is intended, ((the making of entries has the effect of a taking of delivery by the pledgee or a secured party (RCW 62A.9-304 and RCW 62A.9-305))) the security interest is perfected at the time when both value is given by the pledgee and the appropriate entries are made (RCW 62A.8-321). A transferee or pledgee under this section ((is a holder)) may be a bona fide purchaser (RCW 62A.8-302).

(4) A transfer or pledge under this section ((does)) is not ((constitute)) a registration of transfer under Part 4 ((of this Article)).

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the entries ((nor)) or the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

NEW SECTION. Sec. 36. A new section is added to Article 8 of Title 62A RCW to read as follows:

ENFORCEABILITY, ATTACHMENT, PERFECTION AND TERMINATION OF SECURITY INTERESTS. (1) A security interest in a security is enforceable and can attach only if it is transferred to the secured party or a person designated by him pursuant to a provision of RCW 62A.8-313(1).

(2) A security interest so transferred pursuant to agreement by a transferor who has rights in the security to a transferee who has given value is a perfected security interest, but a security interest that has been transferred solely under paragraph (i) of RCW 62A.8-313(1) becomes unperfected after 21 days unless, within that time, the requirements for transfer under any other provision of RCW 62A.8-313(1) are satisfied.

(3) A security interest in a security is subject to the provisions of Article 9, but:

(a) no filing is required to perfect the security interest; and

(b) no written security agreement signed by the debtor is necessary to make the security interest enforceable, except as otherwise provided in paragraph (h), (i), or (j) of RCW 62A.8-313(1).

The secured party has the rights and duties provided under RCW 62A.9-207, to the extent they are applicable, whether or not the security is certificated, and, if certificated, whether or not it is in his possession.

(4) Unless otherwise agreed, a security interest in a security is terminated by transfer to the debtor or a person designated by him pursuant to a provision of RCW 62A.8-313(1). If a security is thus transferred, the security interest, if not terminated, becomes unperfected unless the security is certificated and is delivered to the debtor for the purpose of ultimate sale or exchange or presentation, collection, renewal, or registration of transfer. In that case, the security interest becomes unperfected after 21 days unless, within that time, the security (or securities for which it has been exchanged) is transferred to the secured party or a person designated by him pursuant to a provision of RCW 62A.8-313(1).

PART 4 REGISTRATION

Sec. 37. Section 8-401, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-401 are each amended to read as follows:

DUTY OF ISSUER TO REGISTER TRANSFER, PLEDGE, OR RELEASE. (1) ~~((Where))~~ If a certificated security in registered form is presented to the issuer with a request to register transfer or an instruction is presented to the issuer with a request to register transfer, pledge, or release, the issuer ~~((is under a duty to))~~ shall register the transfer, pledge, or release as requested if:

(a) the security is indorsed or the instruction was originated by the appropriate person or persons (RCW 62A.8-308); ~~((and))~~

(b) reasonable assurance is given that those indorsements or instructions are genuine and effective (RCW 62A.8-402); ~~((and))~~

(c) the issuer has no duty ~~((to inquire into))~~ as to adverse claims or has discharged ~~((any such))~~ the duty (RCW 62A.8-403); ~~((and))~~

(d) any applicable law relating to the collection of taxes has been complied with; and

(e) the transfer, pledge, or release is in fact rightful or is to a bona fide purchaser.

(2) ~~((Where))~~ If an issuer is under a duty to register a transfer, pledge, or release of a security, the issuer is also liable to the person presenting ~~((it))~~ a certificated security or an instruction for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer, pledge, or release.

Sec. 38. Section 8-402, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-402 are each amended to read as follows:

ASSURANCE THAT INDORSEMENTS AND INSTRUCTIONS ARE EFFECTIVE. (1) The issuer may require the following assurance that each necessary indorsement of a certificated security or each instruction (RCW 62A.8-308) is genuine and effective:

(a) in all cases, a guarantee of the signature ~~((subsection (1) of))~~ RCW 62A.8-312 (1) or (2) of the person indorsing a certificated security

or originating an instruction including, in the case of an instruction, a warranty of the taxpayer identification number or, in the absence thereof, other reasonable assurance of identity; ~~(and)~~

(b) ~~((where))~~ if the indorsement is made or the instruction is originated by an agent, appropriate assurance of authority to sign;

(c) ~~((where))~~ if the indorsement is made or the instruction is originated by a fiduciary, appropriate evidence of appointment or incumbency;

(d) ~~((where))~~ if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(e) ~~((where))~~ if the indorsement is made or the instruction is originated by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

(2) A "guarantee of the signature" in subsection (1) means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility ~~((provided such standards))~~ if they are not manifestly unreasonable.

(3) "Appropriate evidence of appointment or incumbency" in subsection (1) means:

(a) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within ~~((sixty))~~ 60 days before the date of presentation for transfer, pledge, or release; or

(b) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of ~~((such a))~~ that document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to ~~((such))~~ the evidence ~~((provided such standards))~~ if they are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

(4) The issuer may elect to require reasonable assurance beyond that specified in this section, but if it does so and, for a purpose other than that specified in subsection (3)(b), both requires and obtains a copy of a will, trust, indenture, articles of co-partnership, bylaws, or other controlling instrument, it is charged with notice of all matters contained therein affecting the transfer, pledge, or release.

Sec. 39. Section 8-403, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-403 are each amended to read as follows:

~~((LIMITED DUTY OF INQUIRY))~~ ISSUER'S DUTY AS TO ADVERSE CLAIMS. (1) An issuer to whom a certificated security is presented for registration ~~((is under a duty to))~~ shall inquire into adverse claims if:

(a) a written notification of an adverse claim is received at a time and in a manner ~~((which affords))~~ affording the issuer a reasonable opportunity

to act on it prior to the issuance of a new, reissued, or re-registered certificated security, and the notification identifies the claimant, the registered owner, and the issue of which the security is a part, and provides an address for communications directed to the claimant; or

(b) the issuer is charged with notice of an adverse claim from a controlling instrument (~~(which)~~) it has elected to require under (~~(subsection (4) of)~~) RCW 62A.8-402(4).

(2) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or, if there be no such address, at his residence or regular place of business that the certificated security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within (~~(thirty)~~) 30 days from the date of mailing the notification, either:

(a) an appropriate restraining order, injunction, or other process issues from a court of competent jurisdiction; or

(b) there is filed with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved(~~(;)~~) from any loss (~~(which)~~) it or they may suffer by complying with the adverse claim (~~(is filed with the issuer)~~).

(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under (~~(subsection (4) of)~~) RCW 62A.8-402(4) or receives notification of an adverse claim under subsection (1) (~~(of this section, where)~~), if a certificated security presented for registration is indorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular:

(a) an issuer registering a certificated security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship; and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(b) an issuer registering transfer on an indorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the indorsement of a fiduciary to the fiduciary himself or to his nominee.

(4) An issuer is under no duty as to adverse claims with respect to an uncertificated security except:

(a) claims embodied in a restraining order, injunction, or other legal process served upon the issuer if the process was served at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection (5);

(b) claims of which the issuer has received a written notification from the registered owner or the registered pledgee if the notification was received at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection (5);

(c) claims (including restrictions on transfer not imposed by the issuer) to which the registration of transfer to the present registered owner was subject and were so noted in the initial transaction statement sent to him; and

(d) claims as to which an issuer is charged with notice from a controlling instrument it has elected to require under RCW 62A.8-402(4).

(5) If the issuer of an uncertificated security is under a duty as to an adverse claim, he discharges that duty by:

(a) including a notation of the claim in any statements sent with respect to the security under RCW 62A.8-408 (3), (6), and (7); and

(b) refusing to register the transfer or pledge of the security unless the nature of the claim does not preclude transfer or pledge subject thereto.

(6) If the transfer or pledge of the security is registered subject to an adverse claim, a notation of the claim must be included in the initial transaction statement and all subsequent statements sent to the transferee and pledgee under RCW 62A.8-408.

(7) Notwithstanding subsections (4) and (5), if an uncertificated security was subject to a registered pledge at the time the issuer first came under a duty as to a particular adverse claim, the issuer has no duty as to that claim if transfer of the security is requested by the registered pledgee or an appropriate person acting for the registered pledgee unless:

(a) the claim was embodied in legal process which expressly provides otherwise;

(b) the claim was asserted in a written notification from the registered pledgee;

(c) the claim was one as to which the issuer was charged with notice from a controlling instrument it required under RCW 62A.8-402(4) in connection with the pledgee's request for transfer; or

(d) the transfer requested is to the registered owner.

Sec. 40. Section 8-404, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-404 are each amended to read as follows:

LIABILITY AND NON-LIABILITY FOR REGISTRATION. (1) Except as ~~((otherwise))~~ provided in any law relating to the collection of taxes, the issuer is not liable to the owner, pledgee, or any other person suffering loss as a result of the registration of a transfer, pledge, or release of a security if:

(a) there were on or with ~~((the))~~ a certificated security the necessary indorsements or the issuer had received an instruction originated by an appropriate person (RCW 62A.8-308); and

(b) the issuer had no duty ~~((to inquire into))~~ as to adverse claims or has discharged ~~((any such))~~ the duty (RCW 62A.8-403).

(2) ~~((Where))~~ If an issuer has registered a transfer of a certificated security to a person not entitled to it, the issuer on demand ~~((must))~~ shall deliver a like security to the true owner unless:

(a) the registration was pursuant to subsection (1); ~~((or))~~

(b) the owner is precluded from asserting any claim for registering the transfer under ~~((subsection (1) of the following section))~~ RCW 62A.8-405(1); or

(c) ~~((such))~~ the delivery would result in overissue, in which case the issuer's liability is governed by RCW 62A.8-104.

(3) If an issuer has improperly registered a transfer, pledge, or release of an uncertificated security, the issuer on demand from the injured party shall restore the records as to the injured party to the condition that would have obtained if the improper registration had not been made unless:

(a) the registration was pursuant to subsection (1); or

(b) the registration would result in overissue, in which case the issuer's liability is governed by RCW 62A.8-104.

Sec. 41. Section 8-405, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-405 are each amended to read as follows:

LOST, DESTROYED, AND STOLEN CERTIFICATED SECURITIES. (1) ~~((Where))~~ If a certificated security has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving ~~((such a))~~ notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under ~~((the preceding section))~~ RCW 62A.8-404 or any claim to a new security under this section.

(2) ~~((Where))~~ If the owner of a certificated security claims that the security has been lost, destroyed, or wrongfully taken, the issuer ~~((must))~~ shall issue a new certificated security or, at the option of the issuer, an equivalent uncertificated security in place of the original security if the owner:

(a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser; ~~((and))~~

(b) files with the issuer a sufficient indemnity bond; and

(c) satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of ~~((the))~~ a new certificated or uncertificated security, a bona fide purchaser of the original certificated security presents it for registration of transfer, the issuer ~~((must))~~ shall register the transfer

unless registration would result in overissue, in which event the issuer's liability is governed by RCW 62A.8-104. In addition to any rights on the indemnity bond, the issuer may recover the new certificated security from the person to whom it was issued or any person taking under him except a bona fide purchaser or may cancel the uncertificated security unless a bona fide purchaser or any person taking under a bona fide purchaser is then the registered owner or registered pledgee thereof.

Sec. 42. Section 8-406, chapter 157, Laws of 1965 ex. sess. and RCW 62A.8-406 are each amended to read as follows:

DUTY OF AUTHENTICATING TRUSTEE, TRANSFER AGENT, OR REGISTRAR. (1) (~~Where~~) If a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its certificated securities or in the registration of transfers, pledges, and releases of its uncertificated securities, in the issue of new securities, or in the cancellation of surrendered securities:

(a) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and

(b) (~~he has~~) with regard to the particular functions he performs, he has the same obligation to the holder or owner of ((the)) a certificated security or to the owner or pledgee of an uncertificated security and has the same rights and privileges as the issuer has in regard to those functions.

(2) Notice to an authenticating trustee, transfer agent, registrar or other (~~such~~) agent is notice to the issuer with respect to the functions performed by the agent.

NEW SECTION. Sec. 43. A new section is added to Article 8 of Title 62A RCW to read as follows:

EXCHANGEABILITY OF SECURITIES. (1) No issuer is subject to the requirements of this section unless it regularly maintains a system for issuing the class of securities involved under which both certificated and uncertificated securities are regularly issued to the category of owners, which includes the person in whose name the new security is to be registered.

(2) Upon surrender of a certificated security with all necessary endorsements and presentation of a written request by the person surrendering the security, the issuer, if he has no duty as to adverse claims or has discharged the duty (RCW 62A.8-403), shall issue to the person or a person designated by him an equivalent uncertificated security subject to all liens, restrictions, and claims that were noted on the certificated security.

(3) Upon receipt of a transfer instruction originated by an appropriate person who so requests, the issuer of an uncertificated security shall cancel the uncertificated security and issue an equivalent certificated security on which must be noted conspicuously any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under RCW

62A.8-403(4)) to which the uncertificated security was subject. The certificated security shall be registered in the name of and delivered to:

(a) the registered owner, if the uncertificated security was not subject to a registered pledge; or

(b) the registered pledgee, if the uncertificated security was subject to a registered pledge.

NEW SECTION. Sec. 44. A new section is added to Article 8 of Title 62A RCW to read as follows:

STATEMENTS OF UNCERTIFICATED SECURITIES. (1) Within 2 business days after the transfer of an uncertificated security has been registered, the issuer shall send to the new registered owner and, if the security has been transferred subject to a registered pledge, to the registered pledgee a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units transferred;

(c) the name and address and any taxpayer identification number of the new registered owner and, if the security has been transferred subject to a registered pledge, the name and address and any taxpayer identification number of the registered pledgee;

(d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under RCW 62A.8-403(4)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and

(e) the date the transfer was registered.

(2) Within 2 business days after the pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the registered pledgee a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units pledged;

(c) the name and address and any taxpayer identification number of the registered owner and the registered pledgee;

(d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under RCW 62A.8-403(4)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and

(e) the date the pledge was registered.

(3) Within 2 business days after the release from pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the pledgee whose interest was released a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units released from pledge;

(c) the name and address and any taxpayer identification number of the registered owner and the pledgee whose interest was released;

(d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under RCW 62A.8-403(4)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions or adverse claims; and

(e) the date the release was registered.

(4) An "initial transaction statement" is the statement sent to:

(a) the new registered owner and, if applicable, to the registered pledgee pursuant to subsection (1);

(b) the registered pledgee pursuant to subsection (2); or

(c) the registered owner pursuant to subsection (3).

Each initial transaction statement shall be signed by or on behalf of the issuer and must be identified as "Initial Transaction Statement".

(5) Within 2 business days after the transfer of an uncertificated security has been registered, the issuer shall send to the former registered owner and the former registered pledgee, if any, a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units transferred;

(c) the name and address and any taxpayer identification number of the former registered owner and of any former registered pledgee; and

(d) the date the transfer was registered.

(6) At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered owner, the issuer shall send to the registered owner of each uncertificated security a dated written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the name and address and any taxpayer identification number of the registered owner;

(c) the number of shares or units of the uncertificated security registered in the name of the registered owner on the date of the statement;

(d) the name and address and any taxpayer identification number of any registered pledgee and the number of shares or units subject to the pledge; and

(e) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under RCW 62A.8-403(4)) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions, or adverse claims.

(7) At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered pledgee, the issuer shall send to the registered pledgee of each uncertificated security a dated written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the name and address and any taxpayer identification number of the registered owner;

(c) the name and address and any taxpayer identification number of the registered pledgee;

(d) the number of shares or units subject to the pledge; and

(e) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under RCW 62A.8-403(4)) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions, or adverse claims.

(8) If the issuer sends the statements described in subsections (6) and (7) at periodic intervals no less frequent than quarterly, the issuer is not obliged to send additional statements upon request unless the owner or pledgee requesting them pays to the issuer the reasonable cost of furnishing them.

(9) Each statement sent pursuant to this section must bear a conspicuous legend reading substantially as follows: "This statement is merely a record of the rights of the addressee as of the time of its issuance. Delivery of this statement, of itself, confers no rights on the recipient. This statement is neither a negotiable instrument nor a security."

Sec. 45. Section 9-103, chapter 157, Laws of 1965 ex. sess. as amended by section 7, chapter 41, Laws of 1981 and RCW 62A.9-103 are each amended to read as follows:

PERFECTION OF SECURITY INTERESTS IN MULTIPLE STATE TRANSACTIONS. (1) Documents, instruments and ordinary goods.

(a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the

law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until thirty days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by Part 3 of this Article to perfect the security interest,

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (subsection (2) of RCW 62A.9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

(2) Certificate of title.

(a) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in paragraph (d) of subsection (1).

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest

or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) Accounts, general intangibles and mobile goods.

(a) This subsection applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) Chattel paper.

The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals.

Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) Uncertificated securities.

The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or non-perfection of a security interest in uncertificated securities.

Sec. 46. Section 9-105, chapter 157, Laws of 1965 ex. sess. as amended by section 9, chapter 41, Laws of 1981 and RCW 62A.9-105 are each amended to read as follows:

DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this Article unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the Article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;

(f) "Document" means document of title as defined in the general definitions of Article 1 (RCW 62A.1-201), and a receipt of the kind described in subsection (2) of RCW 62A.7-201;

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (RCW 62A.9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals and growing crops;

(i) "Instrument" means a negotiable instrument (defined in RCW 62A.3-104), or a certificated security (defined in RCW 62A.8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment;

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(l) "Security agreement" means an agreement which creates or provides for a security interest;

(m) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;

(n) "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Account". RCW 62A.9-106.

"Attach". RCW 62A.9-203.

"Construction mortgage". RCW 62A.9-313(1).

"Consumer goods". RCW 62A.9-109(1).

"Equipment". RCW 62A.9-109(2).

"Farm products". RCW 62A.9-109(3).

"Fixture". RCW 62A.9-313.

"Fixture filing". RCW 62A.9-313.

"General intangibles". RCW 62A.9-106.

"Inventory". RCW 62A.9-109(4).

"Lien creditor". RCW 62A.9-301(3).

"Proceeds". RCW 62A.9-306(1).

"Purchase money security interest". RCW 62A.9-107.

"United States". RCW 62A.9-103.

(3) The following definitions in other Articles apply to this Article:

"Check". RCW 62A.3-104.

"Contract for sale". RCW 62A.2-106.

"Holder in due course". RCW 62A.3-302.

"Note". RCW 62A.3-104.

"Sale". RCW 62A.2-106.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Sec. 47. Section 9-203, chapter 157, Laws of 1965 ex. sess. as last amended by section 12, chapter 412, Laws of 1985 and RCW 62A.9-203 are each amended to read as follows:

(1) Subject to the provisions of RCW 62A.4-208 on the security interest of a collecting bank, RCW 62A.8-321 on security interests in securities and RCW 62A.9-113 on a security interest arising under the Article on Sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) the collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned; (~~and~~)

(b) value has been given; and

(c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by RCW 62A.9-306.

(4) A transaction, although subject to this Article, is also subject to chapters 31.04, 31.08, 31.12, 31.16, 31.20, and 31.24 RCW, and in the case of conflict between the provisions of this Article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

Sec. 48. Section 9-302, chapter 157, Laws of 1965 ex. sess. as last amended by section 3, chapter 258, Laws of 1985 and RCW 62A.9-302 are each amended to read as follows:

(1) A financing statement must be filed to perfect all security interest((s)) except the following:

(a) a security interest in collateral in possession of the secured party under RCW 62A.9-305;

(b) a security interest temporarily perfected in instruments or documents without delivery under RCW 62A.9-304 or in proceeds for a ten day period under RCW 62A.9-306;

(c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered and other property subject to subsection (3) of this section; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in RCW 62A.9-313;

(e) a security interest of a collecting bank (RCW 62A.4-208) or in securities (RCW 62A.8-321) or arising under the Article on Sales (RCW 62A.9-113) or covered in subsection (3) of this section;

(f) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

(2) If a secured party assigns a perfected security interest, no filing under this Article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this Article is not necessary or effective to perfect a security interest in property subject to

(a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this Article for filing of the security interest; or

(b) the following statute of this state: RCW 46.12.095 or 88.02.070; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this Article (Part 4) apply to a security interest in that collateral created by him as debtor; or

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of RCW 62A.9-103).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this Article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in RCW 62A.9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by

the provisions of the statute or treaty; in other respects the security interest is subject to this Article.

(5) Part 4 of this Article does not apply to a security interest in property of any description created by a deed of trust or mortgage made by any corporation primarily engaged in the railroad or street railway business, the furnishing of telephone or telegraph service, the transmission of oil, gas or petroleum products by pipe line, or the production, transmission or distribution of electricity, steam, gas or water, but such security interest may be perfected under this Article by filing such deed of trust or mortgage with the department of licensing. When so filed, such instrument shall remain effective until terminated, without the need for filing a continuation statement. Assignments and releases of such instruments may also be filed with the department of licensing. The director of licensing shall be a filing officer for the foregoing purposes, and the uniform fee for filing, indexing, and furnishing filing data pursuant to this subsection shall be five dollars.

Sec. 49. Section 9-304, chapter 157, Laws of 1965 ex. sess. as amended by section 17, chapter 41, Laws of 1981 and RCW 62A.9-304 are each amended to read as follows:

PERFECTION OF SECURITY INTEREST IN INSTRUMENTS, DOCUMENTS, AND GOODS COVERED BY DOCUMENTS; PERFECTION BY PERMISSIVE FILING; TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION. (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than certificated securities or instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of RCW 62A.9-306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments (other than certificated securities) or negotiable documents is perfected without filing or the taking of possession for a period of twenty-one days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of twenty-one days without filing where a secured party having a perfected security interest in an instrument (other than a certificated security), a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange but priority between conflicting security interests in the goods is subject to subsection (3) of RCW 62A.9-312; or

(b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer.

(6) After the twenty-one day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this Article.

Sec. 50. Section 9-305, chapter 157, Laws of 1965 ex. sess. as amended by section 18, chapter 41, Laws of 1981 and RCW 62A.9-305 are each amended to read as follows:

WHEN POSSESSION BY SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING. A security interest in letters of credit and advices of credit (subsection (2)(a) of RCW 62A.5-116), goods, instruments (other than certificated securities), money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this Article. The security interest may be otherwise perfected as provided in this Article before or after the period of possession by the secured party.

Sec. 51. Section 9-309, chapter 157, Laws of 1965 ex. sess. and RCW 62A.9-309 are each amended to read as follows:

PROTECTION OF PURCHASERS OF INSTRUMENTS (~~AND~~), DOCUMENTS AND SECURITIES. Nothing in this Article limits the rights of a holder in due course of a negotiable instrument (RCW 62A.3-302) or a holder to whom a negotiable document of title has been duly negotiated (RCW 62A.7-501) or a bona fide purchaser of a security (RCW (~~62A.8-301~~) 62A.8-302) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this Article does not constitute notice of the security interest to such holders or purchasers.

Sec. 52. Section 9-312, chapter 157, Laws of 1965 ex. sess. as last amended by section 3, chapter 186, Laws of 1982 and RCW 62A.9-312 are each amended to read as follows:

PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN THE SAME COLLATERAL. (1) The rules of priority stated in other sections of this Part and in the following sections shall govern when applicable: RCW 62A.4-208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; RCW 62A.9-103 on security interests related to other jurisdictions; RCW 62A.9-114 on consignments.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if

(a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the twenty-one day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of RCW 62A.9-304); and

(c) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within twenty days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for

the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing ((or)), the taking of possession, or under RCW 62A.8-321 on securities, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

Sec. 53. Section 1-201, chapter 157, Laws of 1965 ex. sess. as amended by section 2, chapter 41, Laws of 1981 and RCW 62A.1-201 are each amended to read as follows:

GENERAL DEFINITIONS. Subject to additional definitions contained in the subsequent Articles of this Title which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Title:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Title (RCW 62A.1-205 and RCW 62A.2-208). Whether an agreement has legal consequences is determined by the provisions of this Title, if applicable; otherwise by the law of contracts (RCW 62A.1-103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document

serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this Title and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this Title to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" means a person who is in possession of a document of title or an instrument or ((an)) a certificated investment security drawn, issued, or indorsed to him or to his order or to bearer or in blank.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(25) A person has "notice" of a fact when (a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Title.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and

in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this Title.

(30) "Person" includes an individual or an organization (See RCW 62A.1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (RCW 62A.2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which is subject to Article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under RCW 62A.2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (RCW 62A.2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease

one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature or indorsement means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-208 and RCW 62A.4-209) a person gives "value" for rights if he acquires them

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

Sec. 54. Section 5-114, chapter 157, Laws of 1965 ex. sess. and RCW 62A.5-114 are each amended to read as follows:

ISSUER'S DUTY AND PRIVILEGE TO HONOR; RIGHT TO REIMBURSEMENT. (1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is

not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (RCW 62A.7-507) or of a certificated security (RCW 62A.8-306) or is forged or fraudulent or there is fraud in the transaction:

(a) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (RCW 62A.3-302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (RCW 62A.7-502) or a bona fide purchaser of a certificated security (RCW 62A.8-302); and

(b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

(4) When a credit provides for payment by the issuer on receipt of notice that the required documents are in the possession of a correspondent or other agent of the issuer

(a) any payment made on receipt of such notice is conditional; and

(b) the issuer may reject documents which do not comply with the credit if it does so within three banking days following its receipt of the documents; and

(c) in the event of such rejection, the issuer is entitled by charge back or otherwise to return of the payment made.

(5) In the case covered by subsection (4) failure to reject documents within the time specified in sub-paragraph (b) constitutes acceptance of the documents and makes the payment final in favor of the beneficiary.

Sec. 55. Section 22, chapter 53, Laws of 1965 as last amended by section 3, chapter 290, Laws of 1985 and RCW 23A.08.190 are each amended to read as follows:

~~((The shares of a corporation shall be represented by certificates signed by the president or a vice president, and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the president or vice president and~~

~~the secretary or assistant secretary upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issue.~~

~~Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued and, if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series:))~~ (1) Shares may but need not be represented by certificates. Unless this title or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

~~(2) At a minimum each share certificate ((representing shares shall) must state ((upon the)) on its face ((thereof):~~

~~((1) That the corporation))~~ (a) The name of the issuing corporation and that it is organized under the laws of this state(-);

~~((2))~~ (b) The name of the person to whom issued(-);

~~((3))~~ (c) The number and class of shares, and the designation of the series, if any, which such certificate represents.

~~((No certificate shall be issued for any share until the consideration established for its issuance has been paid:))~~ (3) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series and the board's authority to determine variations for future series must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(4) Each share certificate (a) must be signed either manually or in facsimile by two officers designated in the bylaws or by the board of directors and (b) may bear the corporate seal or its facsimile.

(5) If the person who signed either manually or in facsimile a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

NEW SECTION. Sec. 56. A new section is added to chapter 23A.08 RCW to read as follows:

(1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of any of its classes or series of shares without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a complete written statement of the information required on certificates by RCW 23A.08.190.

Sec. 57. Section 23, chapter 53, Laws of 1965 as last amended by section 11, chapter 75, Laws of 1984 and RCW 23A.08.200 are each amended to read as follows:

A corporation may (1) issue fractions of a share, (2) arrange for the disposition of fractional interests by those entitled thereto, (3) pay in money the fair value of fractions of a share as of the time when those entitled to receive such shares are determined, or (4) issue scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip aggregating a full share. ~~((A certificate for a fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation.))~~ The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them. The board of directors may cause such scrip to be issued subject to the condition that it shall become void if not exchanged for ~~((certificates representing))~~ full shares before a specified date, or subject to the condition that the shares for which such scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip, or subject to any other conditions which the board of directors may deem advisable.

Sec. 58. Section 34, chapter 53, Laws of 1965 as amended by section 23, chapter 154, Laws of 1973 1st ex. sess. and RCW 23A.08.310 are each amended to read as follows:

~~((Certificates of stock and the))~~ Shares ~~((represented thereby standing))~~ of record in the name of a married person may be transferred by such person, such person's agent or attorney, without the signature of such person's spouse. All dividends payable upon any shares of a corporation standing in the name of a married person, shall be paid to such married person, such person's agent or attorney, in the same manner as if such person were unmarried, and it shall not be necessary for the other spouse to join in a

receipt therefor; and any proxy or power given by a married person, touching any shares of any corporation standing in such person's name, shall be valid and binding without the signature of the other spouse.

Sec. 59. Section 35, chapter 53, Laws of 1965 and RCW 23A.08.320 are each amended to read as follows:

Whenever (~~certificates for~~) shares or other securities issued by domestic or foreign corporations are or have been issued or transferred to two or more persons in joint tenancy form on the books or records of the corporation, it is presumed in favor of the corporation, its registrar and its transfer agent that the shares or other securities are owned by such persons in joint tenancy and not otherwise. A domestic or foreign corporation or its registrar or transfer agent is not liable for transferring or causing to be transferred on the books of the corporation to or pursuant to the direction of the surviving joint tenant or tenants any share or shares or other securities theretofore issued by the corporation to two or more persons in joint tenancy form on the books or records of the corporation, unless the transfer was made with actual knowledge by the corporation or by its registrar or transfer agent of the existence of any understanding, agreement, condition, or evidence that the shares or securities were held other than in joint tenancy, or of the invalidity of the joint tenancy or a breach of trust by the joint tenants.

Sec. 60. Section 36, chapter 53, Laws of 1965 as amended by section 3, chapter 99, Laws of 1980 and RCW 23A.08.330 are each amended to read as follows:

Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed ten years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. (~~The~~) Certificates of shares or uncertificated shares so transferred shall be surrendered and canceled, and new certificates (~~therefor~~) or uncertificated shares issued to such (~~person or persons, as such~~) trustee or trustees (~~in which new certificates, it shall appear that they are issued pursuant to said~~) to whom it appears the shares, if any, are issued under the agreement. In the entry of transfer on the books of the corporation it shall also be noted that the transfer is made pursuant to said agreement. The trustee or trustees (~~shall~~) may execute and deliver to the transferors voting trust certificates. Such voting trust certificates shall be transferable in the same manner and with the same effect as certificates of stock under the laws of this state.

The counterpart of the voting trust agreement deposited with the corporation shall be subject to the same right of examination by a shareholder

of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose.

At any time within six months before the expiration of such voting trust agreement as originally fixed or extended under this paragraph, one or more holders of voting trust certificates may, by agreement in writing, extend the duration of such voting trust agreement, nominating the same or substitute trustee or trustees, for an additional period not exceeding ten years. Such extension agreement shall not affect the rights or obligations of persons not parties thereto and shall in every respect comply with and be subject to all the provisions of this title applicable to the original voting trust agreement.

Agreements among shareholders regarding the voting of their shares shall be valid and enforceable in accordance with their terms. Such agreements shall not be subject to the provisions of this section regarding voting trusts.

Sec. 61. Section 83, chapter 53, Laws of 1965 as last amended by section 14, chapter 290, Laws of 1985 and RCW 23A.24.040 are each amended to read as follows:

Any shareholder electing to exercise such right of dissent shall file with the corporation, prior to or at the meeting of shareholders at which such proposed corporate action is submitted to a vote, a written objection to such proposed corporate action. If such proposed corporate action be approved by the required vote and such shareholder shall not have voted in favor thereof, such shareholder may, within ten days after the date on which the vote was taken, or if a corporation is to be merged without a vote of its shareholders into another corporation, any other shareholders may, within fifteen days after the plan of such merger shall have been mailed to such shareholders, make written demand on the corporation, or, in the case of a merger or consolidation, on the surviving or new corporation, domestic or foreign, for payment of the fair value of such shareholder's shares, and, if such proposed corporate action is effected, such corporation shall pay to such shareholder, upon surrender of the certificate or certificates representing ~~((such))~~ certificated shares or upon imposition of restrictions on transfer of uncertificated shares, the fair value thereof as of the day prior to the date on which the vote was taken approving the proposed corporate action, excluding any appreciation or depreciation in anticipation of such corporate action. Any shareholder failing to make demand within the applicable ten day or fifteen day period shall be bound by the terms of the proposed corporate action. Any shareholder making such demand shall thereafter be entitled only to payment as in this section provided and shall not be entitled to vote or to exercise any other rights of a shareholder.

No such demand shall be withdrawn unless the corporation shall consent thereto. The right of such shareholder to be paid the fair value of his shares shall cease and his status as a shareholder shall be restored, without prejudice to any corporate proceedings which may have been taken during the interim, if:

- (1) Such demand shall be withdrawn upon consent; or
- (2) The proposed corporate action shall be abandoned or rescinded or the shareholders shall revoke the authority to effect such action; or
- (3) In the case of a merger, on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic and foreign, that are parties to the merger; or
- (4) No demand or petition for the determination of fair value by a court shall have been made or filed within the time provided by this section; or
- (5) A court of competent jurisdiction shall determine that such shareholder is not entitled to the relief provided by this section.

Within ten days after such corporate action is effected, the corporation, or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, shall give written notice thereof to each dissenting shareholder who has made demand as herein provided, and shall make a written offer to each such shareholder to pay for such shares at a specified price deemed by such corporation to be the fair value thereof. Such notice and offer shall be accompanied by a balance sheet of the corporation the shares of which the dissenting shareholder holds, as of the latest available date and not more than twelve months prior to the making of such offer, and a profit and loss statement of such corporation for the twelve months' period ended on the date of such balance sheet.

If within thirty days after the date on which such corporate action was effected the fair value of such shares is agreed upon between any such dissenting shareholder and the corporation, payment therefor shall be made within ninety days after the date on which such corporate action was effected, upon surrender of the certificate or certificates representing ((such)) certificated shares or upon imposition of restrictions on transfer of uncertificated shares. Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares.

If within such period of thirty days a dissenting shareholder and the corporation do not so agree, then the corporation, within thirty days after receipt of written demand from any dissenting shareholder given within sixty days after the date on which such corporate action was effected, shall, or at its election at any time within such period of sixty days may, file a petition in any court of competent jurisdiction in the county in this state where the registered office of the corporation is located praying that the fair value

of such shares be found and determined. If, in the case of a merger or consolidation, the surviving or new corporation is a foreign corporation without a registered office in this state, such petition shall be filed in the county where the registered office of the domestic corporation was last located. If the corporation shall fail to institute the proceeding as herein provided, any dissenting shareholder may do so in the name of the corporation. All dissenting shareholders, wherever residing, shall be made parties to the proceeding as an action against their shares quasi in rem. A copy of the petition shall be served on each dissenting shareholder who is a resident of this state and shall be served by registered or certified mail on each dissenting shareholder who is a nonresident. Service on nonresidents shall also be made by publication as provided by law. The jurisdiction of the court shall be plenary and exclusive. All shareholders who are parties to the proceeding shall be entitled to judgment against the corporation for the amount of the fair value of their shares. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof. The judgment shall be payable only upon and concurrently with the surrender to the corporation of the certificate or certificates representing such shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares.

The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable in all the circumstances, from the date on which the vote was taken on the proposed corporate action to the date of payment.

The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of such costs and expenses may be apportioned and assessed as the court may deem equitable against any or all of the dissenting shareholders who are parties to the proceeding to whom the corporation shall have made an offer to pay for the shares if the court shall find that the action of such shareholders in failing to accept such offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for and reasonable expenses of the appraisers, but shall exclude the fees and expenses of counsel for and experts employed by any party; but if the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay therefor, or if no offer was made, the court in its discretion may award to any shareholder who is a party to the proceeding such sum as the court may determine to be reasonable compensation to any expert or experts employed by the shareholder in the proceeding.

Within twenty days after demanding payment for his shares, each shareholder demanding payment shall submit the certificate or certificates representing his certificated shares to the corporation for notation thereon

that such demand has been made. His failure to do so shall, at the option of the corporation, terminate his rights under this section unless a court of competent jurisdiction, for good and sufficient cause shown, shall otherwise direct. If shares represented by a certificate on which notation has been so made shall be transferred, each new certificate issued therefor shall bear similar notation, together with the name of the original dissenting holder of such shares, and a transferee of such shares shall acquire by such transfer no rights in the corporation other than those which the original dissenting shareholder had after making demand for payment of the fair value thereof.

Passed the House February 13, 1986.

Passed the Senate February 28, 1986.

Approved by the Governor March 10, 1986.

Filed in Office of Secretary of State March 10, 1986.

CHAPTER 36

[Substitute House Bill No. 1480]

VENDING MACHINES—SALES TAX

AN ACT Relating to the collection of the sales tax on sales made through vending machines; amending RCW 82.08.050 and 82.08.080; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 82.08.050, chapter 15, Laws of 1961 as last amended by section 1, chapter 38, Laws of 1985 and RCW 82.08.050 are each amended to read as follows:

The tax hereby imposed shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with the schedule of collections adopted by the department pursuant to the provisions of RCW 82.08.060. The tax required by this chapter, to be collected by the seller, shall be deemed to be held in trust by the seller until paid to the department, and any seller who appropriates or converts the tax collected to his own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter shall be guilty of a gross misdemeanor.

In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of his own acts or the result of acts or conditions beyond his control, he shall, nevertheless, be personally liable to the state for the amount of the tax.

The amount of tax, until paid by the buyer to the seller or to the department, shall constitute a debt from the buyer to the seller and any seller who fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct