

**1997-1998**  
**SESSION LAWS**  
OF THE  
**STATE OF WASHINGTON**

**1ST SPECIAL SESSION**  
**FIFTY-FIFTH LEGISLATURE**  
Convened September 17, 1997. Adjourned September 17, 1997.

**REGULAR SESSION**  
**FIFTY-FIFTH LEGISLATURE**  
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**DENNIS W. COOPER**  
Code Reviser

## WASHINGTON SESSION LAWS GENERAL INFORMATION

### 1. EDITIONS AVAILABLE.

(a) *General Information.* The session laws are printed successively in two editions:

- (i) a temporary pamphlet edition consisting of a series of one or more paper bound books, which are published as soon as possible following the session, at random dates as accumulated; followed by
- (ii) a permanent hardbound edition containing the accumulation of all laws adopted in the legislative session. Both editions contain a subject index and tables indicating Revised Code of Washington sections affected.

(b) *Where and how obtained—price.* Both the temporary and permanent session laws may be ordered from the Statute Law Committee, Legislative Building, P.O. Box 40552, Olympia, Washington 98504-0552. The temporary pamphlet edition costs \$21.60 per set (\$20.00 plus \$1.60 for state and local sales tax at 8.0%). The permanent edition costs \$54.00 per set (\$25.00 per volume plus \$4.00 for state and local sales tax at 8.0%). All orders must be accompanied by payment.

### 2. PRINTING STYLE — INDICATION OF NEW OR DELETED MATTER

Both editions of the session laws present the laws in the form in which they were enacted by the legislature. This style quickly and graphically portrays the current changes to existing law as follows:

(a) In amendatory sections

- (i) underlined matter is new matter.
- (ii) deleted matter is (~~lined out and bracketed between double parentheses~~).

(b) Complete new sections are prefaced by the words NEW SECTION.

### 3. PARTIAL VETOES

(a) Vetoed matter is *printed in bold italics*.

(b) Pertinent excerpts of the governor's explanation of partial vetoes are printed at the end of the chapter concerned.

### 4. EDITORIAL CORRECTIONS. Words and clauses inserted in the session laws under the authority of RCW 44.20.060 are enclosed in [brackets].

### 5. EFFECTIVE DATE OF LAWS

(a) The state Constitution provides that unless otherwise qualified, the laws of any session take effect ninety days after adjournment sine die. The Secretary of State has determined the pertinent date for the Laws of the 1998 regular session to be June 11, 1998 (midnight June 10th).

(b) Laws that carry an emergency clause take effect immediately upon approval by the Governor.

(c) Laws that prescribe an effective date take effect upon that date.

### 6. INDEX AND TABLES

A cumulative index and tables of all 1997 1st special session and 1998 laws may be found at the back of the final pamphlet edition and the permanent hardbound edition.

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# **WASHINGTON LAWS**

**1997 FIRST SPECIAL SESSION**



**CHAPTER I**  
[House Bill 3902]  
**WARRANT CHECKS**

AN ACT Relating to warrant checks; amending RCW 46.61.021; and declaring an emergency.

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

**Sec. 1.** RCW 46.61.021 and 1989 c 353 s 7 are each amended to read as follows:

(1) Any person requested or signaled to stop by a law enforcement officer for a traffic infraction has a duty to stop.

(2) Whenever any person is stopped for a traffic infraction, the officer may detain that person for a reasonable period of time necessary to identify the person, check for outstanding warrants, check the status of the person's license, insurance identification card, and the vehicle's registration, and complete and issue a notice of traffic infraction.

(3) Any person requested to identify himself or herself to a law enforcement officer pursuant to an investigation of a traffic infraction has a duty to identify himself or herself, give his or her current address, and sign an acknowledgement of receipt of the notice of infraction.

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

Passed the House September 17, 1997.

Passed the Senate September 17, 1997.

Approved by the Governor September 17, 1997.

Filed in Office of Secretary of State September 17, 1997.

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# **WASHINGTON LAWS**

**1998 REGULAR SESSION**





## CHAPTER 1

[Engrossed Substitute House Bill 1130]  
MARRIAGES

AN ACT Relating to reaffirming and protecting the institution of marriage; amending RCW 26.04.010 and 26.04.020; and creating new sections.

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

**NEW SECTION. Sec. 1.** (1) In P.L. 104-199; 110 Stat. 219, the Defense of Marriage Act, Congress granted authority to the individual states to either grant or deny recognition of same-sex marriages recognized as valid in another state. The Defense of Marriage Act defines marriage for purposes of federal law as a legal union between one man and one woman as husband and wife and provides that a state shall not be required to give effect to any public act or judicial proceeding of any other state respecting marriage between persons of the same sex if the state has determined that it will not recognize same-sex marriages.

(2) The legislature and the people of the state of Washington find that matters pertaining to marriage are matters reserved to the sovereign states and, therefore, such matters should be determined by the people within each individual state and not by the people or courts of a different state.

**NEW SECTION. Sec. 2.** (1) It is a compelling interest of the state of Washington to reaffirm its historical commitment to the institution of marriage as a union between a man and a woman as husband and wife and to protect that institution.

(2) The court in *Singer v. Hara*, 11 Wn. App. 247 (1974) held that the Washington state marriage statute does not allow marriage between persons of the same sex. It is the intent of the legislature by this act to codify the *Singer* opinion and to fully exercise the authority granted the individual states by Congress in P.L. 104-199; 110 Stat. 219, the Defense of Marriage Act, to establish public policy against same-sex marriage in statutory law that clearly and definitively declares same-sex marriages will not be recognized in Washington, even if they are made legal in other states.

**Sec. 3.** RCW 26.04.010 and 1973 1st ex.s. c 154 s 26 are each amended to read as follows:

(1) Marriage is a civil contract ((which may be entered into by persons of) between a male and a female who have each attained the age of eighteen years, and who are otherwise capable(~~(- PROVIDED, That)~~).

(2) Every marriage entered into in which either ((party shall not have)) the husband or the wife has not attained the age of seventeen years ((shall be)) is void except where this section has been waived by a superior court judge of the county in which one of the parties resides on a showing of necessity.

**Sec. 4.** RCW 26.04.020 and 1927 c 189 s 1 are each amended to read as follows:

(1) Marriages in the following cases are prohibited:

~~((1))~~ (a) When either party thereto has a wife or husband living at the time of such marriage(-);

~~((2))~~ (b) When the ~~((parties thereto))~~ husband and wife are nearer of kin to each other than second cousins, whether of the whole or half blood computing by the rules of the civil law; or

(c) When the parties are persons other than a male and a female.

~~((3))~~ (2) It ~~((shall be))~~ is unlawful for any man to marry his father's sister, mother's sister, daughter, sister, son's daughter, daughter's daughter, brother's daughter or sister's daughter; it ~~((shall be))~~ is unlawful for any woman to marry her father's brother, mother's brother, son, brother, son's son, daughter's son, brother's son or sister's son.

(3) A marriage between two persons that is recognized as valid in another jurisdiction is valid in this state only if the marriage is not prohibited or made unlawful under subsection (1)(a), (1)(c), or (2) of this section.

Passed the House February 6, 1998.

Passed the Senate February 6, 1998.

Vetoed by the Governor February 6, 1998.

Filed in Office of Secretary of State February 6, 1998.

## CHAPTER 2

[Second Substitute Senate Bill 5727]

### DELIVERY TRUCK BACKUP ALERTS

AN ACT Relating to backup alert devices on delivery trucks; amending RCW 46.37.400; and providing an effective date.

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

Sec. 1. RCW 46.37.400 and 1977 ex.s. c 355 s 34 are each amended to read as follows:

(1) Every motor vehicle shall be equipped with a mirror mounted on the left side of the vehicle and so located to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of such vehicle.

(2) Every motor vehicle shall be equipped with an additional mirror mounted either inside the vehicle approximately in the center or outside the vehicle on the right side and so located as to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of such vehicle.

(3) Every truck registered or based in Washington that is equipped with a cube-style, walk-in cargo box up to eighteen feet long used in the commercial delivery of goods and services must be equipped with a rear crossview mirror or backup device to alert the driver that a person or object is behind the truck.

(4) All mirrors and backup devices required by this section shall be maintained in good condition. Rear crossview mirrors and backup devices will be of a type approved by the Washington state patrol.

NEW SECTION. Sec. 2. This act takes effect September 30, 1998.

Passed the Senate February 17, 1998.  
 Passed the House March 3, 1998.  
 Approved by the Governor March 11, 1998.  
 Filed in Office of Secretary of State March 11, 1998.

**CHAPTER 3**  
 [House Bill 1082]  
 CONTEMPT OF COURT

AN ACT Relating to contempt of court; and amending RCW 7.21.020.

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

**Sec. 1.** RCW 7.21.020 and 1989 c 373 s 2 are each amended to read as follows:

A judge or commissioner of the supreme court, the court of appeals, or the superior court, ~~((and))~~ a judge of a court of limited jurisdiction, and a commissioner of a court of limited jurisdiction may impose a sanction for contempt of court under this chapter.

Passed the House January 12, 1998.  
 Passed the Senate February 27, 1998.  
 Approved by the Governor March 11, 1998.  
 Filed in Office of Secretary of State March 11, 1998.

**CHAPTER 4**  
 [House Bill 1117]  
 SUPPLYING LIQUOR TO MINORS

AN ACT Relating to penalties for the supplying of liquor to or the consumption of liquor by persons under the age of twenty-one; amending RCW 66.44.270; and prescribing penalties.

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

**Sec. 1.** RCW 66.44.270 and 1993 c 513 s 1 are each amended to read as follows:

(1) It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control. For the purposes of this subsection, "premises" includes real property, houses, buildings, and other structures, and motor vehicles and watercraft. A violation of this subsection is a gross misdemeanor punishable as provided for in chapter 9A.20 RCW.

(2)(a) It is unlawful for any person under the age of twenty-one years to possess, consume, or otherwise acquire any liquor. A violation of this subsection is a gross misdemeanor punishable as provided for in chapter 9A.20 RCW.

(b) It is unlawful for a person under the age of twenty-one years to be in a public place, or to be in a motor vehicle in a public place, while exhibiting the

effects of having consumed liquor. For purposes of this subsection, exhibiting the effects of having consumed liquor means that a person has the odor of liquor on his or her breath and either: (i) Is in possession of or close proximity to a container that has or recently had liquor in it; or (ii) by speech, manner, appearance, behavior, lack of coordination, or otherwise, exhibits that he or she is under the influence of liquor. This subsection (2)(b) does not apply if the person is in the presence of a parent or guardian or has consumed or is consuming liquor under circumstances described in subsection (4) or (5) of this section.

(3) Subsections (1) and (2)(a) of this section do not apply to liquor given or permitted to be given to a person under the age of twenty-one years by a parent or guardian and consumed in the presence of the parent or guardian. This subsection shall not authorize consumption or possession of liquor by a person under the age of twenty-one years on any premises licensed under chapter 66.24 RCW.

(4) This section does not apply to liquor given for medicinal purposes to a person under the age of twenty-one years by a parent, guardian, physician, or dentist.

(5) This section does not apply to liquor given to a person under the age of twenty-one years when such liquor is being used in connection with religious services and the amount consumed is the minimal amount necessary for the religious service.

(6) Conviction or forfeiture of bail for a violation of this section by a person under the age of twenty-one years at the time of such conviction or forfeiture shall not be a disqualification of that person to acquire a license to sell or dispense any liquor after that person has attained the age of twenty-one years.

Passed the House January 12, 1998.

Passed the Senate February 27, 1998.

Approved by the Governor March 11, 1998.

Filed in Office of Secretary of State March 11, 1998.

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## CHAPTER 5

[Substitute Senate Bill 5853]

### WARRANTS FOR PAYMENT BY FIRE PROTECTION DISTRICTS

AN ACT Relating to fire protection district finance officers; and amending RCW 52.16.050.

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

Sec. 1. RCW 52.16.050 and 1984 c 230 s 42 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the county treasurer shall pay out money received for the account of the district on warrants issued by the county auditor against the proper funds of the district. The warrants shall be issued on vouchers approved and signed by a majority of the district board and by the district secretary.

(2) The board of fire commissioners of a district that had an annual operating budget of five million or more dollars in each of the preceding three years may by resolution adopt a policy to issue its own warrants for payment of claims or other obligations of the fire district. The board of fire commissioners, after auditing all payrolls and bills, may authorize the issuing of one general certificate to the county treasurer, to be signed by the chair of the board of fire commissioners, authorizing the county treasurer to pay all the warrants specified by date, number, name, and amount, and the accounting funds on which the warrants shall be drawn; thereupon the district secretary may issue the warrants specified in the general certificate.

(3) The county treasurer may also pay general obligation bonds and the accrued interest thereon in accordance with their terms from the general obligation bond fund when interest or principal payments become due. The county treasurer shall report in writing monthly to the secretary of the district the amount of money held by the county in each fund and the amounts of receipts and disbursements for each fund during the preceding month.

Passed the Senate February 12, 1998.

Passed the House February 27, 1998.

Approved by the Governor March 11, 1998.

Filed in Office of Secretary of State March 11, 1998.

## CHAPTER 6

[Substitute Senate Bill 5873]

### MODEL TOXICS CONTROL ACT—LIABILITY

AN ACT Relating to liability under the model toxics control act; and amending RCW 70.105D.020.

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

**Sec. 1.** RCW 70.105D.020 and 1997 c 406 s 2 are each amended to read as follows:

(1) "Agreed order" means an order issued by the department under this chapter with which the potentially liable person receiving the order agrees to comply. An agreed order may be used to require or approve any cleanup or other remedial actions but it is not a settlement under RCW 70.105D.040(4) and shall not contain a covenant not to sue, or provide protection from claims for contribution, or provide eligibility for public funding of remedial actions under RCW 70.105D.070(2)(d)(xi).

(2) "Department" means the department of ecology.

(3) "Director" means the director of ecology or the director's designee.

(4) "Facility" means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft, or (b) any site or area where a hazardous

substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(5) "Federal cleanup law" means the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

(6) "Foreclosure and its equivalents" means purchase at a foreclosure sale, acquisition, or assignment of title in lieu of foreclosure, termination of a lease, or other repossession, acquisition of a right to title or possession, an agreement in satisfaction of the obligation, or any other comparable formal or informal manner, whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower, by which the holder acquires title to or possession of a facility securing a loan or other obligation.

(7) "Hazardous substance" means:

(a) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste designated by rule pursuant to chapter 70.105 RCW;

(b) Any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

(c) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);

(d) Petroleum or petroleum products; and

(e) Any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

(8) "Independent remedial actions" means remedial actions conducted without department oversight or approval, and not under an order, agreed order, or consent decree.

(9) "Holder" means a person who holds indicia of ownership primarily to protect a security interest. A holder includes the initial holder such as the loan originator, any subsequent holder such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market, a guarantor of an obligation, surety, or any other person who holds indicia of ownership primarily to protect a security interest, or a receiver, court-appointed trustee, or other person who acts on behalf or for the benefit of a holder. A holder can be a public or privately owned financial institution, receiver, conservator, loan guarantor, or other similar persons that loan money or guarantee repayment of a loan. Holders typically are banks or savings and loan institutions but may also include others such as insurance companies, pension funds, or private individuals that engage in loaning of money or credit.

(10) "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in a facility securing a loan or other obligation, including any legal or equitable title to a facility acquired incident to foreclosure and its equivalents. Evidence of such interests includes, mortgages, deeds of trust, sellers interest in a real estate contract, liens, surety bonds, and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased facility, or legal or equitable title obtained pursuant to foreclosure and their equivalents. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against the facility that are held primarily to protect a security interest.

(11) "Operating a facility primarily to protect a security interest" occurs when all of the following are met: (a) Operating the facility where the borrower has defaulted on the loan or otherwise breached the security agreement; (b) operating the facility to preserve the value of the facility as an ongoing business; (c) the operation is being done in anticipation of a sale, transfer, or assignment of the facility; and (d) the operation is being done primarily to protect a security interest. Operating a facility for longer than one year prior to foreclosure or its equivalents shall be presumed to be operating the facility for other than to protect a security interest.

(12) "Owner or operator" means:

(a) Any person with any ownership interest in the facility or who exercises any control over the facility; or

(b) In the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment;

The term does not include:

(i) An agency of the state or unit of local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility;

(ii) A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility. Holders after foreclosure and its equivalent and holders who engage in any of the activities identified in subsection (13)(e) through (g) of this section shall not lose this exemption provided the holder complies with all of the following:

(A) The holder properly maintains the environmental compliance measures already in place at the facility;

(B) The holder complies with the reporting requirements in the rules adopted under this chapter;

(C) The holder complies with any order issued to the holder by the department to abate an imminent or substantial endangerment;

(D) The holder allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the holder are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The holder does not exacerbate an existing release((†-†)). The exemption in this subsection (12)(b)(ii) does not apply to holders who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided, however, that a holder shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release;

(iii) A fiduciary in his, her, or its personal or individual capacity. This exemption does not preclude a claim against the assets of the estate or trust administered by the fiduciary or against a nonemployee agent or independent contractor retained by a fiduciary. This exemption also does not apply to the extent that a person is liable under this chapter independently of the person's ownership as a fiduciary or for actions taken in a fiduciary capacity which cause or contribute to a new release or exacerbate an existing release of hazardous substances. This exemption applies provided that, to the extent of the fiduciary's powers granted by law or by the applicable governing instrument granting fiduciary powers, the fiduciary complies with all of the following:

(A) The fiduciary properly maintains the environmental compliance measures already in place at the facility;

(B) The fiduciary complies with the reporting requirements in the rules adopted under this chapter;

(C) The fiduciary complies with any order issued to the fiduciary by the department to abate an imminent or substantial endangerment;

(D) The fiduciary allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the fiduciary are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The fiduciary does not exacerbate an existing release.

The exemption in this subsection (12)(b)(iii) does not apply to fiduciaries who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided



however, that a fiduciary shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release. The exemption in this subsection (12)(b)(iii) also does not apply where the fiduciary's powers to comply with this subsection (12)(b)(iii) are limited by a governing instrument created with the objective purpose of avoiding liability under this chapter or of avoiding compliance with this chapter; or

(iv) Any person who has any ownership interest in, operates, or exercises control over real property where a hazardous substance has come to be located solely as a result of migration of the hazardous substance to the real property through the ground water from a source off the property, if:

(A) The person can demonstrate that the hazardous substance has not been used, placed, managed, or otherwise handled on the property in a manner likely to cause or contribute to a release of the hazardous substance that has migrated onto the property;

(B) The person has not caused or contributed to the release of the hazardous substance;

(C) The person does not engage in activities that damage or interfere with the operation of remedial actions installed on the person's property or engage in activities that result in exposure of humans or the environment to the contaminated ground water that has migrated onto the property;

(D) If requested, the person allows the department, potentially liable persons who are subject to an order, agreed order, or consent decree, and the authorized employees, agents, or contractors of each, access to the property to conduct remedial actions required by the department. The person may attempt to negotiate an access agreement before allowing access; and

(E) Legal withdrawal of ground water does not disqualify a person from the exemption in this subsection (12)(b)((iii)) (iv).

~~((The exemption in (b)(ii) of this subsection does not apply to holders who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided, however, that a holder shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release.))~~

(13) "Participation in management" means exercising decision-making control over the borrower's operation of the facility, environmental compliance, or assuming or manifesting responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise.

The term does not include any of the following: (a) A holder with the mere capacity or ability to influence, or the unexercised right to control facility operations; (b) a holder who conducts or requires a borrower to conduct an environmental audit or an environmental site assessment at the facility for which

indicia of ownership is held; (c) a holder who requires a borrower to come into compliance with any applicable laws or regulations at the facility for which indicia of ownership is held; (d) a holder who requires a borrower to conduct remedial actions including setting minimum requirements, but does not otherwise control or manage the borrower's remedial actions or the scope of the borrower's remedial actions except to prepare a facility for sale, transfer, or assignment; (e) a holder who engages in workout or policing activities primarily to protect the holder's security interest in the facility; (f) a holder who prepares a facility for sale, transfer, or assignment or requires a borrower to prepare a facility for sale, transfer, or assignment; (g) a holder who operates a facility primarily to protect a security interest, or requires a borrower to continue to operate, a facility primarily to protect a security interest; and (h) a prospective holder who, as a condition of becoming a holder, requires an owner or operator to conduct an environmental audit, conduct an environmental site assessment, come into compliance with any applicable laws or regulations, or conduct remedial actions prior to holding a security interest is not participating in the management of the facility.

(14) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

(15) "Policing activities" means actions the holder takes to insure that the borrower complies with the terms of the loan or security interest or actions the holder takes or requires the borrower to take to maintain the value of the security. Policing activities include: Requiring the borrower to conduct remedial actions at the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, regulations, and permits during the term of the security interest; securing or exercising authority to monitor or inspect the facility including on-site inspections, or to monitor or inspect the borrower's business or financial condition during the term of the security interest; or taking other actions necessary to adequately police the loan or security interest such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower.

(16) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040. The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

(17) "Prepare a facility for sale, transfer, or assignment" means to secure access to the facility; perform routine maintenance on the facility; remove inventory, equipment, or structures; properly maintain environmental compliance measures already in place at the facility; conduct remedial actions to clean up releases at the facility; or to perform other similar activities intended to preserve the value of the facility where the borrower has defaulted on the loan or otherwise breached the security agreement or after foreclosure and its equivalents and in

anticipation of a pending sale, transfer, or assignment, primarily to protect the holder's security interest in the facility. A holder can prepare a facility for sale, transfer, or assignment for up to one year prior to foreclosure and its equivalents and still stay within the security interest exemption in subsection (12)(b)(ii) of this section.

(18) "Primarily to protect a security interest" means the indicia of ownership is held primarily for the purpose of securing payment or performance of an obligation. The term does not include indicia of ownership held primarily for investment purposes nor indicia of ownership held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons, for maintaining indicia of ownership, but the primary reason must be for protection of a security interest. Holding indicia of ownership after foreclosure or its equivalents for longer than five years shall be considered to be holding the indicia of ownership for purposes other than primarily to protect a security interest. For facilities that have been acquired through foreclosure or its equivalents prior to July 23, 1995, this five-year period shall begin as of July 23, 1995.

(19) "Public notice" means, at a minimum, adequate notice mailed to all persons who have made timely request of the department and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the newspaper of largest circulation in the city or county of the proposed action; and opportunity for interested persons to comment.

(20) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

(21) "Remedy" or "remedial action" means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(22) "Security interest" means an interest in a facility created or established for the purpose of securing a loan or other obligation. Security interests include deeds of trusts, sellers interest in a real estate contract, liens, legal, or equitable title to a facility acquired incident to foreclosure and its equivalents, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, easements, and consignments, if the transaction creates or establishes an interest in a facility for the purpose of securing a loan or other obligation.

(23) "Industrial properties" means properties that are or have been characterized by, or are to be committed to, traditional industrial uses such as

processing or manufacturing of materials, marine terminal and transportation areas and facilities, fabrication, assembly, treatment, or distribution of manufactured products, or storage of bulk materials, that are either:

(a) Zoned for industrial use by a city or county conducting land use planning under chapter 36.70A RCW; or

(b) For counties not planning under chapter 36.70A RCW and the cities within them, zoned for industrial use and adjacent to properties currently used or designated for industrial purposes.

(24) "Workout activities" means those actions by which a holder, at any time prior to foreclosure and its equivalents, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Workout activities include: Restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owed to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owed to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(25)(a) "Fiduciary" means a person acting for the benefit of another party as a bona fide trustee; executor; administrator; custodian; guardian of estates or guardian ad litem; receiver; conservator; committee of estates of incapacitated persons; trustee in bankruptcy; trustee, under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender. Except as provided in subsection (12)(b)(iii) of this section, the liability of a fiduciary under this chapter shall not exceed the assets held in the fiduciary capacity.

(b) "Fiduciary" does not mean:

(i) A person acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person;

(ii) A person who acquires ownership or control of a facility with the objective purpose of avoiding liability of the person or any other person. It is prima facie evidence that the fiduciary acquired ownership or control of the facility to avoid liability if the facility is the only substantial asset in the fiduciary estate at the time the facility became subject to the fiduciary estate;

(iii) A person who acts in a capacity other than that of a fiduciary or in a beneficiary capacity and in that capacity directly or indirectly benefits from a trust or fiduciary relationship;

(iv) A person who is a beneficiary and fiduciary with respect to the same fiduciary estate, and who while acting as a fiduciary receives benefits that exceed customary or reasonable compensation, and incidental benefits permitted under applicable law;

(v) A person who is a fiduciary and receives benefits that substantially exceed customary or reasonable compensation, and incidental benefits permitted under applicable law; or

(vi) A person who acts in the capacity of trustee of state or federal lands or resources.

(26) "Fiduciary capacity" means the capacity of a person holding title to a facility, or otherwise having control of an interest in the facility pursuant to the exercise of the responsibilities of the person as a fiduciary.

Passed the Senate February 11, 1998.

Passed the House February 27, 1998.

Approved by the Governor March 11, 1998.

Filed in Office of Secretary of State March 11, 1998.

## CHAPTER 7

[Senate Bill 6118]

### PUBLIC SERVICE ETHICS—GIFTS

AN ACT Relating to gifts under ethics in public service laws; and amending RCW 42.52.010 and 42.52.150.

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

**Sec. 1.** RCW 42.52.010 and 1996 c 213 s 1 are each amended to read as follows:

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

(1) "Agency" means any state board, commission, bureau, committee, department, institution, division, or tribunal in the legislative, executive, or judicial branch of state government. "Agency" includes all elective offices, the state legislature, those institutions of higher education created and supported by the state government, and those courts that are parts of state government.

(2) "Head of agency" means the chief executive officer of an agency. In the case of an agency headed by a commission, board, committee, or other body consisting of more than one natural person, agency head means the person or board authorized to appoint agency employees and regulate their conduct.

(3) "Assist" means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to, or otherwise provide assistance to another person, believing that the action is of help, aid, advice, or assistance to the person and with intent so to assist such person.

(4) "Beneficial interest" has the meaning ascribed to it under the Washington case law. However, an ownership interest in a mutual fund or similar investment

pooling fund in which the owner has no management powers does not constitute a beneficial interest in the entities in which the fund or pool invests.

(5) "Compensation" means anything of economic value, however designated, that is paid, loaned, granted, or transferred, or to be paid, loaned, granted, or transferred for, or in consideration of, personal services to any person.

(6) "Confidential information" means (a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.

(7) "Contract" or "grant" means an agreement between two or more persons that creates an obligation to do or not to do a particular thing. "Contract" or "grant" includes, but is not limited to, an employment contract, a lease, a license, a purchase agreement, or a sales agreement.

(8) "Ethics boards" means the commission on judicial conduct, the legislative ethics board, and the executive ethics board.

(9) "Family" has the same meaning as "immediate family" in RCW 42.17.020.

(10) "Gift" means anything of economic value for which no consideration is given. "Gift" does not include:

(a) Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee;

(b) Items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties;

(c) Items exchanged among officials and employees or a social event hosted or sponsored by a state officer or state employee for coworkers;

(d) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(e) Items a state officer or state employee is authorized by law to accept;

(f) Payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, ((or)) trade ((association)), or charitable association or institution. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(g) Items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt;

(h) Campaign contributions reported under chapter 42.17 RCW;

(i) Discounts available to an individual as a member of an employee group, occupation, or similar broad-based group; and

(j) Awards, prizes, scholarships, or other items provided in recognition of academic or scientific achievement.

(11) "Honorarium" means money or thing of value offered to a state officer or state employee for a speech, appearance, article, or similar item or activity in connection with the state officer's or state employee's official role.

(12) "Official duty" means those duties within the specific scope of employment of the state officer or state employee as defined by the officer's or employee's agency or by statute or the state Constitution.

(13) "Participate" means to participate in state action or a proceeding personally and substantially as a state officer or state employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation, or otherwise but does not include preparation, consideration, or enactment of legislation or the performance of legislative duties.

(14) "Person" means any individual, partnership, association, corporation, firm, institution, or other entity, whether or not operated for profit.

(15) "Regulatory agency" means any state board, commission, department, or officer, except those in the legislative or judicial branches, authorized by law to conduct adjudicative proceedings, issue permits or licenses, or to control or affect interests of identified persons.

(16) "Responsibility" in connection with a transaction involving the state, means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or through subordinates, effectively to approve, disapprove, or otherwise direct state action in respect of such transaction.

(17) "State action" means any action on the part of an agency, including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

(18) "State officer" means every person holding a position of public trust in or under an executive, legislative, or judicial office of the state. "State officer" includes judges of the superior court, judges of the court of appeals, justices of the supreme court, members of the legislature together with the secretary of the senate and the chief clerk of the house of representatives, holders of elective offices in the executive branch of state government, chief executive officers of state agencies, members of boards, commissions, or committees with authority over one or more state agencies or institutions, and employees of the state who are engaged in supervisory, policy-making, or policy-enforcing work. For the purposes of this chapter, "state officer" also includes any person exercising or undertaking to exercise the powers or functions of a state officer.

(19) "State employee" means an individual who is employed by an agency in any branch of state government. For purposes of this chapter, employees of the superior courts are not state officers or state employees.

(20) "Thing of economic value," in addition to its ordinary meaning, includes:

- (a) A loan, property interest, interest in a contract or other chose in action, and employment or another arrangement involving a right to compensation;
- (b) An option, irrespective of the conditions to the exercise of the option; and
- (c) A promise or undertaking for the present or future delivery or procurement.

(21)(a) "Transaction involving the state" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the state officer, state employee, or former state officer or state employee in question believes, or has reason to believe:

- (i) Is, or will be, the subject of state action; or
- (ii) Is one to which the state is or will be a party; or
- (iii) Is one in which the state has a direct and substantial proprietary interest.

(b) "Transaction involving the state" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by an officer or employee; or a claim, case, lawsuit, or similar matter if the officer or employee did not participate in the underlying transaction involving the state that is the basis for the claim, case, or lawsuit.

**Sec. 2.** RCW 42.52.150 and 1994 c 154 s 115 are each amended to read as follows:

(1) No state officer or state employee may accept gifts, other than those specified in subsections (2) and (5) of this section, with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars. For purposes of this section, "single source" means any person, as defined in RCW 42.52.010, whether acting directly or through any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs, not excluded from the definition of gift under RCW 42.52.010. The value of gifts given to an officer's or employee's family member or guest shall be attributed to the official or employee for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.

(2) Except as provided in subsection (4) of this section, the following items are presumed not to influence under RCW 42.52.140, and may be accepted without regard to the limit established by subsection (1) of this section:

- (a) Unsolicited flowers, plants, and floral arrangements;
- (b) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;
- (c) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;
- (d) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal



beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(e) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(f) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;

(g) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

(h) Unsolicited gifts from dignitaries from another state or a foreign country that are intended to be personal in nature.

(3) The presumption in subsection (2) of this section is rebuttable and may be overcome based on the circumstances surrounding the giving and acceptance of the item.

(4) Notwithstanding subsections (2) and (5) of this section, a state officer or state employee of a regulatory agency or of an agency that seeks to acquire goods or services who participates in those regulatory or contractual matters may receive, accept, take, or seek, directly or indirectly, only the following items from a person regulated by the agency or from a person who seeks to provide goods or services to the agency:

(a) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(b) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(c) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(d) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(e) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;

(f) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

(g) Those items excluded from the definition of gift in RCW 42.52.010 except:

(i) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity;

(ii) Payments for seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, ((or)) trade ((association)), or charitable association or institution; and

(iii) Flowers, plants, and floral arrangements.

(5) A state officer or state employee may accept gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties. Gifts in the form of food and beverage that exceed fifty dollars on a single occasion shall be reported as provided in chapter 42.17 RCW.

Passed the Senate February 11, 1998.

Passed the House February 27, 1998.

Approved by the Governor March 11, 1998.

Filed in Office of Secretary of State March 11, 1998.

## CHAPTER 8

[Engrossed Senate Bill 6123]

### ANIMAL HEALTH

AN ACT Relating to animal health; amending RCW 16.36.005, 16.36.010, 16.36.020, 16.36.040, 16.36.050, 16.36.060, 16.36.070, 16.36.080, 16.36.090, 16.36.096, 16.36.100, 16.36.105, 16.36.110, 16.44.130, 16.44.140, 16.44.160, and 43.23.070; adding new sections to chapter 16.36 RCW; recodifying RCW 16.44.130, 16.44.140, and 16.44.160; repealing RCW 9.08.020, 16.36.030, 16.36.103, 16.36.107, 16.36.108, 16.36.109, 16.36.120, 16.36.130, 16.44.020, 16.44.030, 16.44.040, 16.44.045, 16.44.050, 16.44.060, 16.44.070, 16.44.080, 16.44.090, 16.44.110, 16.44.120, 16.44.150, and 16.44.180; and prescribing penalties.

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

**Sec. 1.** RCW 16.36.005 and 1987 c 163 s 1 are each amended to read as follows:

As used in this chapter:

"Animal" means all members of the animal kingdom except humans, fish, and insects. However, "animal" does not mean non-captive wildlife as defined in RCW 77.08.010(16), except as used in RCW 16.36.050(1) and RCW 16.36.080 (1), (2), (3), and (5).

"Animal reproductive product" means sperm, ova, fertilized ova, and embryos from animals.

"Farm-raised fish" means fish raised by aquaculture as defined in RCW 15.85.020. Farm-raised fish are considered to be a part of animal agriculture; however, disease inspection, prevention, and control programs and related activities for farm-raised fish are administered by the department of fish and wildlife under chapter 75.58 RCW.

"Communicable disease" means a disease due to a specific infectious agent or its toxic products transmitted from an infected person, animal, or inanimate reservoir to a susceptible host, either directly or indirectly through an intermediate plant or animal host, vector, or the environment.

"Contagious disease" means a communicable disease that is capable of being easily transmitted from one animal to another animal or a human.

"Director" means the director of agriculture of the state of Washington or his authorized representative.

"Department" means the department of agriculture of the state of Washington.

"Deputized state veterinarian" means a Washington state licensed and accredited veterinarian appointed and compensated by the director according to state law and department policies.

"Garbage" means the solid animal and vegetable waste and offal together with the natural moisture content resulting from the handling, preparation, or consumption of foods in houses, restaurants, hotels, kitchens, markets, meat shops, packing houses and similar establishments or any other food waste containing meat or meat products.

"Herd or flock plan" means a written management agreement between the owner of a herd or flock and the state veterinarian, with possible input from a private accredited veterinarian designated by the owner and the area veterinarian-in-charge of the United States department of agriculture, animal and plant health inspection service, veterinary services in which each participant agrees to undertake actions specified in the herd or flock plan to control the spread of infectious, contagious, or communicable disease within and from an infected herd or flock and to work toward eradicating the disease in the infected herd or flock.

"Hold order" means an order by the director to the owner or agent of the owner of animals or animal reproductive products which restricts the animals or products to a designated holding location pending an investigation by the director of the disease, disease exposure, well-being, movement, or import status of the animals or animal reproductive products.

"Infectious agent" means an organism including viruses, rickettsia, bacteria, fungi, protozoa, helminthes, or prions that is capable of producing infection or infectious disease.

"Infectious disease" means a clinical disease of man or animals resulting from an infection with an infectious agent that may or may not be communicable or contagious.

"Livestock" means horses, mules, donkeys, cattle, bison, sheep, goats, swine, rabbits, llamas, alpacas, ratites, poultry, waterfowl, game birds, and other species so designated by statute. "Livestock" does not mean free ranging wildlife as defined in Title 77 RCW.

"Person" means a person, persons, firm, or corporation.

"Quarantine" means the placing and restraining of any animal or its reproductive products by the owner or agent of the owner within a certain described and designated enclosure or area within this state, or the restraining of any animal or its reproductive products from entering this state, as may be directed in an order by the director.

"Reportable disease" means a disease designated by rule by the director as reportable to the department by veterinarians and others made responsible to report by statute.

"Veterinary biologic" means any virus, serum, toxin, and analogous product of natural or synthetic origin, or product prepared from any type of genetic

engineering, such as diagnostics, antitoxins, vaccines, live microorganisms, killed microorganisms, and the antigenic or immunizing components intended for use in the diagnosis, treatment, or prevention of diseases in animals.

Sec. 2. RCW 16.36.010 and 1927 c 165 s 2 are each amended to read as follows:

~~((The word "quarantine" as used in this act shall mean the placing and restraining of any animal or animals by the owner or agents in charge thereof, either within a certain described and designated enclosure or area within this state, or the restraining of any such animal or animals from entering this state, as may be directed in writing by the director of agriculture, or his duly authorized representative.))~~ (1) The director shall supervise the prevention of the spread and the suppression of infectious, contagious, communicable, and dangerous diseases affecting animals within, in transit through, and imported into the state.

(2) The director may issue a quarantine order and enforce the quarantine of any animal or its reproductive products that is affected with or has been exposed to disease, either within or outside the state. The quarantine shall remain in effect as long as the director deems necessary.

(3) The director may issue a hold order when:

(a) Overt disease or exposure to disease in an animal is not immediately obvious but there is reasonable cause to investigate whether an animal is diseased or has been exposed to disease;

(b) Import health papers, permits, or other transportation documents required by law or rule are not complete or are suspected to be fraudulent; or

(c) Further transport of an animal would jeopardize the well-being of the animal or other animals in Washington state.

A hold order is in effect for seven days and expires at midnight on the seventh day from the date of the hold order. A hold order may be replaced with a quarantine order for the purpose of animal disease control.

(4) Any animal or ~~((animals so quarantined within the state))~~ animal reproductive product placed under a quarantine or hold order shall ~~((at all times))~~ be kept separate and apart from other ~~((domestic))~~ animals designated in the instructions of the quarantine or hold order, and shall not be allowed to have anything in common ~~((therewith))~~ with other animals.

(5) The expenses of handling and caring for any animal or animal reproductive product placed under a quarantine or hold order are the responsibility of the owner.

(6) The director has authority over the quarantine or hold area until the quarantine or hold order is released or the hold order expires.

(7) Any animal or animal reproductive product placed under a quarantine or hold order may not be moved, transported, or sold without written approval from the director or until the quarantine or hold order is released, or the hold order expires.

(8) The director may administer oaths and examine witnesses and records in the performance of his or her duties to control diseases affecting animals.

Sec. 3. RCW 16.36.020 and 1987 c 163 s 2 are each amended to read as follows:

~~((The director shall have general supervision of the prevention of the spread and the suppression of infectious, contagious, communicable and dangerous diseases affecting animals within, in transit through and being imported into the state. The director may establish and enforce quarantine of and against any and all domestic animals which are affected with any such disease or that may have been exposed to others thus affected, whether within or without the state, for such length of time as he deems necessary to determine whether any such animal is infected with any such disease.))~~

(1) The director shall ~~((also))~~ enforce and administer the provisions of this chapter pertaining to garbage feeding ~~((and when garbage has been fed to swine, the director may require the disinfection of all facilities, including yard, transportation and feeding facilities, used for keeping such swine)).~~

(2) The director ~~((shall also have))~~ has the authority to regulate the sale, distribution, and use of veterinary biologics in the state and may adopt rules to restrict the sale, distribution, or use of any veterinary biologic in any manner ~~((the director determines to be))~~ necessary to protect the health and safety of the public and the state's animal population.

(3) The director has the authority to license and regulate the activities of veterinary laboratories that do not have a veterinarian licensed under chapter 18.92 RCW present within the management or staff of the veterinary laboratory. The director may adopt rules to regulate these laboratories in any manner necessary to protect the health and safety of the public and the public's animals.

Sec. 4. RCW 16.36.040 and 1979 c 154 s 10 are each amended to read as follows:

(1) The director ~~((of agriculture shall have power to promulgate))~~ may adopt and enforce ((such reasonable)) rules((-regulations and orders as he may deem)) necessary ((or proper to prevent)) to carry out the purpose and provisions of this chapter, and including:

(a) Preventing the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting ~~((domestic))~~ animals in this state ~~((,-and to promulgate and enforce such reasonable rules, regulations and orders as he may deem necessary or proper));~~

(b) Governing the inspection and ~~((test))~~ testing of all animals within or about to be imported into this state ~~((,-and to promulgate and enforce intercounty embargoes and quarantine to prevent the shipment, trailing, trucking, transporting or movement of bovine animals from any county that has not been declared modified accredited by the United States department of agriculture, animal and plant health inspection service, for tuberculosis and/or certified brucellosis free, into a county which has been declared modified accredited by the United States department of agriculture, animal and plant health inspection service, for tuberculosis and/or certified brucellosis free, unless such animals are accompa-~~

nied by a negative certificate of tuberculin test made within sixty days and/or a negative brucellosis test made within the forty-five day period prior to the movement of such animal into such county, issued by a duly authorized veterinary inspector of the state department of agriculture, or of the United States department of agriculture, animal and plant health inspection service, or an accredited veterinarian authorized by permit issued by the director of agriculture to execute such certificate)); and

(c) Designating any disease as a reportable disease.

(2) Rules to prevent the introduction or spread of infectious, contagious, communicable, or dangerous diseases affecting animals in this state may differ from federal regulations by being more restrictive.

Sec. 5. RCW 16.36.050 and 1979 c 154 s 11 are each amended to read as follows:

It ~~((shall be))~~ is unlawful for any person ~~((, or any railroad or transportation company, or other common carrier,))~~ to:

(1) Bring into this state for any purpose any ((domestic)) animals without first having secured an official health certificate((, certified)) or certificate of veterinary inspection, reviewed by the state veterinarian of the state of origin that ((such)) the animals meet the health requirements ((promulgated by the director of agriculture)) of the state of Washington((, PROVIDED, That)). This ((section shall)) subsection does not apply to ((domestic animals)) livestock imported into this state for immediate slaughter, or ((domestic animals imported for the purpose of unloading for feed, rest, and water, for a period not in excess of twenty-eight hours except upon prior permit therefor secured from the director of agriculture. It shall be unlawful for any person to)) other animals exempted by rule;

(2) Divert en route ((for)) to other than ((to)) an approved, inspected ((stockyard)) feedlot for ((immediate)) subsequent slaughter or to sell for other than immediate slaughter or to fail to slaughter within ((fourteen)) seven calendar days after arrival, any animal imported into this state for immediate slaughter((, It shall be unlawful for any person, railroad, transportation company, or other common carrier, to keep any domestic animals which are unloaded for feed, rest and water in other than quarantined pens, or not to report any missing animals to the director of agriculture at the time the animals are reloaded));

(3) Intentionally falsely make, complete, alter, use, or sign an animal health certificate, certificate of veterinary inspection, or official written animal health document of the department;

(4) Willfully hinder, obstruct, or resist the director, or any peace officer or deputized state veterinarian acting under him or her, when engaged in the performance of their duties; or

(5) Willfully fail to comply with or to violate any rule or order adopted by the director under this chapter.

Sec. 6. RCW 16.36.060 and 1985 c 415 s 2 are each amended to read as follows:

~~((It shall be unlawful for any person to wilfully hinder, obstruct, or resist the director of agriculture or any duly authorized representative, or any peace officer acting under him or them, when engaged in the performance of the duties or in the exercise of the powers conferred by this chapter, and it shall be unlawful for any person to wilfully fail to comply with or violate any rule, regulation or order promulgated by the director of agriculture or his duly authorized representatives under the provisions of this chapter. The director of agriculture shall have the authority under such rules and regulations as shall be promulgated by him to enter at any reasonable time the premises of any livestock owner to make tests on any animals for diseased conditions, and it shall be unlawful for any person to interfere with such tests in any manner, or to violate any segregation or identification order made in connection with such tests by the director of agriculture, or his duly authorized representative.))~~ The director has the authority to enter the animal premises of any animal owner at any reasonable time to make tests on or examinations of any animals for disease conditions when there is reasonable evidence that animals on the premises are infected with or have been exposed to a reportable disease. It is unlawful for any person to interfere with the tests or examinations, or to alter any segregation or identification systems made in connection with the tests or examinations.

Sec. 7. RCW 16.36.070 and 1947 c 172 s 6 are each amended to read as follows:

~~((Whenever a majority of))~~ When any ~~((board of health, board of county commissioners, city council or other))~~ local governing body ~~((of any incorporated city or town, or trustees of any township, whether in session or not, shall, in writing or by telegraph, notify))~~ notifies the director ~~((of agriculture))~~ of the ~~((prevalence of))~~ presence or probable danger of infection from any ~~((of the))~~ animal diseases ~~((of domestic animals)), the director ((of agriculture personally, or by the supervisor of dairy and livestock, or by a duly appointed and)),~~ state veterinarian, or a deputized state veterinarian ~~((of the division of dairy and livestock, shall at once go to the place designated in said notice and take such action as the exigencies may in his judgment demand, and may))~~ shall respond immediately and take appropriate action. In case of an emergency, the director may appoint deputies or assistants~~(:)~~ with equal power to act. ~~((The compensation to be paid such emergency deputies and assistants, shall be fixed by the director of agriculture in conformity with the standards effective in the locality in which the services are performed.))~~

Sec. 8. RCW 16.36.080 and 1947 c 172 s 7 are each amended to read as follows:

~~((It shall be unlawful for))~~ (1) Any person ((registered)) licensed to practice veterinary medicine, surgery, and dentistry in this state ~~((not to)),~~ veterinary laboratories, and others designated by this chapter shall immediately report in writing or by telephone, facsimile, or electronic mail to the director ~~((of agriculture the discovery of))~~ the existence or suspected existence of any

~~reportable disease among ((domestic)) animals within the state ((of any reportable diseases as published by the director of agriculture)).~~

(2) Persons using their own diagnostic services must report any reportable disease among animals within the state to the director.

(3) The director shall investigate and/or maintain records of all cases of reportable diseases among animals within this state.

(4) The director may require appropriate treatment of any animal affected with, suspected of being affected with, or that has been exposed to any reportable disease. The owner may dispose of the animal rather than treating the animal as required by the director.

(5) It is unlawful for any person to import any animal infected with or exposed to a reportable disease without a permit from the director.

Sec. 9. RCW 16.36.090 and 1985 c 415 s 3 are each amended to read as follows:

~~((Whenever in the opinion of the director of agriculture, upon the report of the state veterinarian, the public welfare demands the destruction of any animal found to be affected with any infectious, contagious, communicable or dangerous disease, or held under quarantine for brucellosis when the owner of the animal fails or refuses to follow a herd plan established by the state veterinarian, he shall be authorized to, by written order, direct such animal or animals to be destroyed by or under the direction of the state veterinarian.))~~ When public welfare demands, the director may order the slaughter or destruction of any animal affected with or exposed to any contagious, infectious, or communicable disease that is affecting or may affect the health of the state's animal population. The director may order destruction of any animal held under quarantine when the owner of the animal fails or refuses to follow a herd or flock plan. The director shall give a written order directing an animal be destroyed by or under the direction of the state veterinarian.

Sec. 10. RCW 16.36.096 and 1985 c 415 s 4 are each amended to read as follows:

~~((The director of agriculture, in order to protect the public health and welfare, may enter into cooperative programs with the federal government or agencies thereof for the prevention or eradication of any contagious, infectious, or communicable disease which is affecting or which may affect the health of the animal population of this state.~~

~~—The director of agriculture may also order the slaughter or destruction of any animal affected with or exposed to such a disease and pay indemnities to the owner of such animal. The director of agriculture may pay an indemnity in an amount not to exceed fifty percent of the appraised or salvage value of the animal ordered slaughtered or destroyed and the actual amount shall be established by the director of agriculture by rule. PROVIDED, HOWEVER, The amount of indemnities paid for cattle under this chapter shall not be less than twenty-five dollars for any grade beef breed female, fifty dollars for any purebred registered~~



~~beef breed bull or female, one hundred dollars for any grade dairy breed female or one hundred fifty dollars for any purebred registered dairy breed bull or female. — In ordering the slaughter or destruction of any animals pursuant to this section, the provisions for payment of indemnity shall not apply to animals (1) belonging to the federal government or any of its agencies, this state or political subdivision thereof, or any municipal corporation; and (2) to any animals which have been brought into this state and have been in this state for a period of less than six months before being ordered slaughtered or destroyed by the director of agriculture.))~~ In ordering the slaughter or destruction of any animal, the director may pay an indemnity in an amount not to exceed seventy-five percent of the appraised or salvage value of the animal ordered slaughtered or destroyed. The actual indemnity amount shall be established by the director by rule. Payment of indemnity does not apply to an animal: (1) Belonging to the federal government or any of its agencies, this state or any of its agencies, or any municipal corporation; or (2) that has been brought into this state in violation of this chapter or rules adopted under this chapter.

Sec. 11. RCW 16.36.100 and 1927 c 165 s 10 are each amended to read as follows:

~~The ((governor and the)) director ((of agriculture shall have the power)) is authorized to cooperate with ((the government of the United States in the prevention and eradication of diseases of domestic animals and the governor shall have the power to receive and receipt for any moneys receivable by this state under the provisions of any act of congress and pay the same into the hands of the state treasurer as custodian for the state to be used and expended in carrying out the provisions of this act and the act or acts of congress under which said moneys are paid over to the state)) and enter into agreements with governmental agencies of this state, other states, and agencies of federal government in order to carry out the purpose and provisions of this chapter and to promote consistency of regulation.~~

Sec. 12. RCW 16.36.105 and 1953 c 17 s 4 are each amended to read as follows:

No person shall feed garbage to swine without first ~~((securing))~~ obtaining a license ~~((therefor))~~ from the ~~((department of agriculture))~~ director. The license ~~((shall be renewed on the thirtieth of))~~ expires on June ~~30th~~ of each year. Application ~~((therefor))~~ for a license shall be accompanied by a ~~((license))~~ fee of ten dollars which shall be ~~((returned to the applicant if the license is denied, or))~~ credited to the general fund ~~((if the license is granted))~~. The license is nontransferable and a separate license ~~((shall be))~~ is required for each place of business if an operator has more than one feeding station.

Upon receipt of an application for a license to feed garbage, the director shall inspect the premises and determine whether the applicant meets the requirements of 9 CFR Chapter 1 Part 166 as adopted by rule and any other rules adopted under this chapter. Upon approval of the application by the director and compliance

with the provisions of this section, the applicant shall be issued a license. This section does not apply to any person feeding garbage from his or her own domestic household.

Sec. 13. RCW 16.36.110 and 1989 c 354 s 35 are each amended to read as follows:

~~((A violation of or a failure to comply with))~~ (1) Any person who violates any provision of this chapter or the rules adopted under this chapter shall be guilty of a gross misdemeanor. Each day upon which a violation occurs ~~((shall))~~ constitutes a separate violation. ~~((Any person violating the provisions of RCW 16.36.005, 16.36.020, 16.36.103, 16.36.105, 16.36.107, 16.36.108 or 16.36.109 may be enjoined from continuing such violation))~~

(2) The director may bring an action to enjoin the violation of any provision of this chapter or any rule adopted under this chapter in the superior court of Thurston county or of the county in which such violation occurs notwithstanding the existence of other remedies at law.

(3) The director may deny, revoke, or suspend any license issued under this chapter for any failure or refusal to comply with this chapter or rules adopted under this chapter. Upon notice by the director to deny, revoke, or suspend a license, a person may request a hearing under chapter 34.05 RCW.

Sec. 14. RCW 16.44.130 and 1927 c 165 s 26 are each amended to read as follows:

(1) ~~It~~ ~~((shall be))~~ is unlawful for any person ~~((, firm or corporation))~~ to sell, exchange, or give away ~~((or in any manner part with to another;))~~ any ~~((sheep infected with any contagious or infectious or communicable disease, or any sheep which has, or which the owner or his agent or employee or the person in charge thereof, has reason to believe has, within thirty days next preceding such transfer been exposed to any contagious, infectious or communicable disease, without first notifying the person, firm or corporation to whom such sheep is transferred that it is so infected, or that it has been so exposed, and every person, firm or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor and shall be punished by a fine not less than one hundred dollars nor more than five hundred dollars))~~ animal that he or she knows:

(a) Is infected with any contagious, infectious, or communicable disease;

(b) Has been exposed to any contagious, communicable, or infectious disease within the previous thirty days; or

(c) Has been treated for any condition within the previous thirty days; without notifying the purchaser or person taking possession of the animal of the infection, exposure, or treatment unless the legal withdrawal period for any treatment has been met or exceeded.

(2) It is unlawful for any owner or person in possession of any animal having any contagious, communicable, or infectious disease to knowingly:

(a) Turn out the animal onto enclosed lands adjoining the enclosed lands of another that are kept for pasture or otherwise used for raising animals without notifying the owner of the enclosed lands; or

(b) Stable the animal or allow the animal to be stabled in any barn with other animals without notifying the other owners.

Sec. 15. RCW 16.44.140 and 1927 c 165 s 28 are each amended to read as follows:

~~((It shall be the duty of)) Any person((,-persons, firm or corporation)) owning or having in his or ((their)) her control any ((sheep)) livestock which ((have)) become infected with ((scabies or any other contagious, infectious or communicable disease)) scrapie or another transmissible spongiform encephalopathy (TSE) or which have been exposed ((in any manner)) to such disease, ((to)) shall immediately report the ((same)) disease or exposure to the director ((of agriculture by registered letter, telegraph, telephone or in person within ten days after said condition has come to his or their knowledge and any person, persons, firm or corporation failing so to do or attempting)). It is unlawful for any person to fail to report or to attempt to conceal the existence of any such disease((,-or wilfully obstructing or hindering the director of agriculture or the supervisor or any inspector of the division of dairy and livestock or any officer of the United States bureau of animal industry in the discharge of his or their duties under the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars)).~~

Sec. 16. RCW 16.44.160 and 1927 c 165 s 32 are each amended to read as follows:

~~((Whenever)) When any ((sheep)) livestock affected with ((scabies or)) any ((other)) contagious, infectious, or communicable disease ((shall)) mingle with any healthy ((animals)) livestock belonging to another person, through the fault or negligence of the owner of ((said)) the diseased ((sheep;)) livestock or his or her agent ((or employees, such)), the owner ((shall be)) is liable ((in any action at law) for all damages sustained by the owner of ((such)) the healthy ((sheep)) livestock.~~

NEW SECTION. Sec. 17. A new section is added to chapter 16.36 RCW to be codified between RCW 16.36.096 and 16.36.100 to read as follows:

Any person whose animal or animal reproductive products are placed under a quarantine, hold, or destruct order may request a hearing. The request for a hearing must be in writing and filed with the director. Any hearing will be held in conformance with RCW 34.05.422 and 34.05.479.

NEW SECTION. Sec. 18. A new section is added to chapter 16.36 RCW to be codified between RCW 16.36.120 and 16.36.130 to read as follows:

Certain animals defined in this chapter as livestock or animal may also meet the definition of wildlife contained in Title 77 RCW. This chapter does not allow importation, possession, or uses of animals that are in violation of Title 77 RCW

or the rules adopted under that title, nor does it relieve the owners or possessors of wildlife from full compliance with the requirements of Title 77 RCW or the rules adopted under that title. Rules adopted by the director shall not allow importation, possession, or uses of animals that are in violation of Title 77 RCW or the rules adopted under that title.

**NEW SECTION. Sec. 19.** A new section is added to chapter 16.36 RCW to read as follows:

The director may collect moneys to recover the reasonable costs of printing and distributing certificates and other supplies to veterinarians.

**Sec. 20.** RCW 43.23.070 and 1983 c 248 s 7 are each amended to read as follows:

The state veterinarian shall exercise all the powers and perform all duties prescribed by law relating to diseases among ((domestic)) animals and the quarantine and destruction of diseased animals.

((He)) The state veterinarian shall enforce and supervise the administration of all laws relating to meat inspection, the prevention, detection, control and eradication of diseases of ((domestic)) animals, and all other matters relative to the diseases of livestock and their effect upon the public health.

**NEW SECTION. Sec. 21.** RCW 16.44.130, 16.44.140, and 16.44.160 are each recodified as new sections in chapter 16.36 RCW to be codified between RCW 16.36.080 and 16.36.090.

**NEW SECTION. Sec. 22.** The following acts or parts of acts are each repealed:

- (1) RCW 9.08.020 and 1909 c 249 s 288 & Code 1881 s 923;
- (2) RCW 16.36.030 and 1985 c 415 s 1, 1979 c 154 s 9, 1947 c 172 s 2, & 1927 c 165 s 3;
- (3) RCW 16.36.103 and 1953 c 17 s 3;
- (4) RCW 16.36.107 and 1953 c 17 s 5;
- (5) RCW 16.36.108 and 1953 c 17 s 6;
- (6) RCW 16.36.109 and 1953 c 17 s 7;
- (7) RCW 16.36.120 and 1993 c 105 s 4;
- (8) RCW 16.36.130 and 1993 c 80 s 1;
- (9) RCW 16.44.020 and 1927 c 165 s 16;
- (10) RCW 16.44.030 and 1927 c 165 s 17;
- (11) RCW 16.44.040 and 1927 c 165 s 18;
- (12) RCW 16.44.045 and 1927 c 165 s 20;
- (13) RCW 16.44.050 and 1927 c 165 s 27;
- (14) RCW 16.44.060 and 1927 c 165 s 19;
- (15) RCW 16.44.070 and 1927 c 165 s 21;
- (16) RCW 16.44.080 and 1927 c 165 s 24;
- (17) RCW 16.44.090 and 1927 c 165 s 29;
- (18) RCW 16.44.110 and 1927 c 165 s 23;
- (19) RCW 16.44.120 and 1927 c 165 s 25;

(20) RCW 16.44.150 and 1927 c 165 s 31; and

(21) RCW 16.44.180 and 1957 c 22 s 7.

Passed the Senate February 10, 1998.

Passed the House February 27, 1998.

Approved by the Governor March 11, 1998.

Filed in Office of Secretary of State March 11, 1998.

## CHAPTER 9

[Substitute Senate Bill 6129]

### POLLUTION CONTROL TAX CREDITS—CONTINUED USE

AN ACT Relating to allowing continued use of pollution control tax credits after facilities have been modified to maintain effective pollution control; amending RCW 82.34.100; and repealing RCW 82.34.080.

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

**Sec. 1.** RCW 82.34.100 and 1988 c 127 s 37 are each amended to read as follows:

(1) The department of ecology, after notice to the department and the applicant and after affording the applicant an opportunity for a hearing, shall, on its own initiative or on complaint of the local or regional air pollution control agency in which an air pollution control facility is located, or is expected to be located, revise the prior findings of the appropriate control agency whenever any of the following appears:

~~((1))~~ (a) The certificate or supplement thereto was obtained by fraud or misrepresentation, or the holder of the certificate has failed substantially without good cause to proceed with the construction, reconstruction, installation or acquisition of a facility or without good cause has failed substantially to operate the facility for the purpose specified by the appropriate control agency in which case the department shall modify or revoke the certificate. If the certificate and/or supplement are revoked, all applicable taxes from which an exemption has been secured under this chapter or against which the credit provided for by this chapter has been claimed shall be immediately due and payable with the maximum interest and penalties prescribed by applicable law. No statute of limitations shall operate in the event of fraud or misrepresentation.

~~((2))~~ (b) The facility covered by the certificate or supplement thereto is no longer operated primarily for the purpose of the control or reduction of water pollution or the control, capture, and removal of pollutants from the air, as the case may be, or is no longer suitable or reasonably adequate to meet the intent and purposes of chapter 70.94 RCW or chapter 90.48 RCW, in which case the certificate shall be modified or revoked.

(2) A certificate, or supplement thereto, issued pursuant to RCW 82.34.030 may not be revoked if:

(a) The facility is modified, but is still operated primarily for the purpose of the control or reduction of water pollution or the control, capture, and removal of

pollutants from the air and is reasonably adequate to meet the intent and purposes of chapter 70.94 or 90.48 RCW;

(b) The facility is replaced by a new or different facility that is still operated primarily for the purpose of the control or reduction of water pollution or the control, capture, and removal of pollutants from the air and is reasonably adequate to meet the intent and purposes of chapter 70.94 or 90.48 RCW;

(c) The facility is modified or removed as a result of an alteration of the production process and the alteration results in reasonably adequate compliance with the intent and purposes of chapter 70.94 or 90.48 RCW;

(d) The industrial, manufacturing, waste disposal, utility, or other commercial establishment in which the facility was installed ceases operations and the cessation of operation results in reasonably adequate compliance with the intent and purposes of chapter 70.94 or 90.48 RCW;

(e) Part of an industrial, manufacturing, waste disposal, utility, or other commercial establishment in which the facility was installed ceases operations and the cessation of operation results in reasonably adequate compliance with the intent and purposes of chapter 70.94 or 90.48 RCW; or

(f) The industrial, manufacturing, waste disposal, utility, or other commercial establishment in which the facility was installed is altered and the alteration results in reasonably adequate compliance with the intent and purposes of chapter 70.94 or 90.48 RCW.

(3) Upon the date of mailing by certified mail to the certificate holder of notice of the action of the department modifying or revoking a certificate or supplement, the certificate or supplement shall cease to be in force or shall remain in force only as modified.

NEW SECTION. Sec. 2. RCW 82.34.080 and 1981 2nd ex.s. c 9 s 4 & 1967 ex.s. c 139 s 8 are each repealed.

Passed the Senate February 11, 1998.

Passed the House February 27, 1998.

Approved by the Governor March 11, 1998.

Filed in Office of Secretary of State March 11, 1998.

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**CHAPTER 10**

[Substitute Senate Bill 6136]

**DRUG OFFENSES IN BACKGROUND CHECKS**

AN ACT Relating to drug offenses in background checks; amending RCW 43.43.830, 43.43.834, and 43.43.842; and adding a new section to chapter 43.43 RCW.

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

**Sec. 1.** RCW 43.43.830 and 1996 c 178 s 12 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.43.830 through 43.43.840.

(1) "Applicant" means:

(a) Any prospective employee who will or may have unsupervised access to children under sixteen years of age or developmentally disabled persons or vulnerable adults during the course of his or her employment or involvement with the business or organization;

(b) Any prospective volunteer who will have regularly scheduled unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults during the course of his or her employment or involvement with the business or organization under circumstances where such access will or may involve groups of (i) five or fewer children under twelve years of age, (ii) three or fewer children between twelve and sixteen years of age, (iii) developmentally disabled persons, or (iv) vulnerable adults; or

(c) Any prospective adoptive parent, as defined in RCW 26.33.020.

(2) "Business or organization" means a business or organization licensed in this state, any agency of the state, or other governmental entity, that educates, trains, treats, supervises, houses, or provides recreation to developmentally disabled persons, vulnerable adults, or children under sixteen years of age, including but not limited to public housing authorities, school districts, and educational service districts.

(3) "Civil adjudication" means a specific court finding of sexual abuse or exploitation or physical abuse in a dependency action under RCW 13.34.040 or in a domestic relations action under Title 26 RCW. In the case of vulnerable adults, civil adjudication means a specific court finding of abuse or financial exploitation in a protection proceeding under chapter 74.34 RCW. It does not include administrative proceedings. The term "civil adjudication" is further limited to court findings that identify as the perpetrator of the abuse a named individual, over the age of eighteen years, who was a party to the dependency or dissolution proceeding or was a respondent in a protection proceeding in which the finding was made and who contested the allegation of abuse or exploitation.

(4) "Conviction record" means "conviction record" information as defined in RCW 10.97.030(3) relating to a crime against children or other persons committed by either an adult or a juvenile. It does not include a conviction for an offense that has been the subject of an expungement, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the record has been expunged according to law.

(5) "Crime against children or other persons" means a conviction of any of the following offenses: Aggravated murder; first or second degree murder; first or second degree kidnaping; first, second, or third degree assault; first, second, or third degree assault of a child; first, second, or third degree rape; first, second, or third degree rape of a child; first or second degree robbery; first degree arson; first

degree burglary; first or second degree manslaughter; first or second degree extortion; indecent liberties; incest; vehicular homicide; first degree promoting prostitution; communication with a minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; child abuse or neglect as defined in RCW 26.44.020; first or second degree custodial interference; malicious harassment; first, second, or third degree child molestation; first or second degree sexual misconduct with a minor; (~~first or second degree rape of a child;~~) patronizing a juvenile prostitute; child abandonment; promoting pornography; selling or distributing erotic material to a minor; custodial assault; violation of child abuse restraining order; child buying or selling; prostitution; felony indecent exposure; criminal abandonment; or any of these crimes as they may be renamed in the future.

(6) "Crimes relating to drugs" means a conviction of a crime to manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance.

(7) "Crimes relating to financial exploitation" means a conviction for first, second, or third degree extortion; first, second, or third degree theft; first or second degree robbery; forgery; or any of these crimes as they may be renamed in the future.

(~~(7)~~) (8) "Disciplinary board final decision" means any final decision issued by a disciplining authority under chapter 18.130 RCW or the secretary of the department of health for the following businesses or professions:

- (a) Chiropractic;
- (b) Dentistry;
- (c) Dental hygiene;
- (d) Massage;
- (e) Midwifery;
- (f) Naturopathy;
- (g) Osteopathic medicine and surgery;
- (h) Physical therapy;
- (i) Physicians;
- (j) Practical nursing;
- (k) Registered nursing; and
- (l) Psychology.

"Disciplinary board final decision," for real estate brokers and salespersons, means any final decision issued by the director of the department of licensing for real estate brokers and salespersons.

(~~(8)~~) (9) "Unsupervised" means not in the presence of:

- (a) Another employee or volunteer from the same business or organization as the applicant; or
- (b) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the applicant has access during the course of his or her employment or involvement with the business or organization.



~~((9))~~ (10) "Vulnerable adult" means "vulnerable adult" as defined in chapter 74.34 RCW, except that for the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

~~((10))~~ (11) "Financial exploitation" means the illegal or improper use of a vulnerable adult or that adult's resources for another person's profit or advantage.

~~((11))~~ (12) "Agency" means any person, firm, partnership, association, corporation, or facility which receives, provides services to, houses or otherwise cares for vulnerable adults.

NEW SECTION. Sec. 2. A new section is added to chapter 43.43 RCW to read as follows:

For purposes of background checks, convictions for crimes relating to drugs may be used as a tool for investigation and may be used for any decision regarding the person's suitability for a position in which the person may have unsupervised access to children or vulnerable adults.

Sec. 3. RCW 43.43.834 and 1990 c 3 s 1103 are each amended to read as follows:

(1) A business or organization shall not make an inquiry to the Washington state patrol under RCW 43.43.832 or an equivalent inquiry to a federal law enforcement agency unless the business or organization has notified the applicant who has been offered a position as an employee or volunteer, that an inquiry may be made.

(2) A business or organization shall require each applicant to disclose to the business or organization whether the applicant has been:

(a) Convicted of any crime against children or other persons;

(b) Convicted of crimes relating to financial exploitation if the victim was a vulnerable adult;

(c) Convicted of crimes related to drugs as defined in RCW 43.43.830;

(d) Found in any dependency action under RCW 13.34.040 to have sexually assaulted or exploited any minor or to have physically abused any minor;

~~((d))~~ (e) Found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused or exploited any minor or to have physically abused any minor;

~~((e))~~ (f) Found in any disciplinary board final decision to have sexually or physically abused or exploited any minor or developmentally disabled person or to have abused or financially exploited any vulnerable adult; or

~~((f))~~ (g) Found by a court in a protection proceeding under chapter 74.34 RCW, to have abused or financially exploited a vulnerable adult.

The disclosure shall be made in writing and signed by the applicant and sworn under penalty of perjury. The disclosure sheet shall specify all crimes against children or other persons and all crimes relating to financial exploitation as defined in RCW 43.43.830 in which the victim was a vulnerable adult.

(3) The business or organization shall pay such reasonable fee for the records check as the state patrol may require under RCW 43.43.838.

(4) The business or organization shall notify the applicant of the state patrol's response within ten days after receipt by the business or organization. The employer shall provide a copy of the response to the applicant and shall notify the applicant of such availability.

(5) The business or organization shall use this record only in making the initial employment or engagement decision. Further dissemination or use of the record is prohibited. A business or organization violating this subsection is subject to a civil action for damages.

(6) An insurance company shall not require a business or organization to request background information on any employee before issuing a policy of insurance.

(7) The business and organization shall be immune from civil liability for failure to request background information on an applicant unless the failure to do so constitutes gross negligence.

**Sec. 4.** RCW 43.43.842 and 1997 c 392 s 518 are each amended to read as follows:

(1)(a) The secretary of social and health services and the secretary of health shall adopt additional requirements for the licensure or relicensure of agencies, facilities, and licensed individuals who provide care and treatment to vulnerable adults, including nursing pools registered under chapter 18.52C RCW. These additional requirements shall ensure that any person associated with a licensed agency or facility having unsupervised access with a vulnerable adult shall not have been; (i) Convicted of a crime against persons as defined in RCW 43.43.830, except as provided in this section; (ii) convicted of crimes relating to financial exploitation as defined in RCW 43.43.830, except as provided in this section; (iii) found in any disciplinary board final decision to have abused a vulnerable adult under RCW 43.43.830; or (iv) the subject in a protective proceeding under chapter 74.34 RCW.

(b) A person associated with a licensed agency or facility who has unsupervised access with a vulnerable adult shall make the disclosures specified in RCW 43.43.834(2). The person shall make the disclosures in writing, sign, and swear to the contents under penalty of perjury. The person shall, in the disclosures, specify all crimes against children or other persons, ~~((and))~~ all crimes relating to financial exploitation, and all crimes relating to drugs as defined in RCW 43.43.830, committed by the person.

(2) The rules adopted under this section shall permit the licensee to consider the criminal history of an applicant for employment in a licensed facility when the applicant has one or more convictions for a past offense and:

(a) The offense was simple assault, assault in the fourth degree, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;

(b) The offense was prostitution, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;

(c) The offense was theft in the third degree, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;

(d) The offense was theft in the second degree, or the same offense as it may be renamed, and five or more years have passed between the most recent conviction and the date of application for employment;

(e) The offense was forgery, or the same offense as it may be renamed, and five or more years have passed between the most recent conviction and the date of application for employment.

The offenses set forth in (a) through (e) of this subsection do not automatically disqualify an applicant from employment by a licensee. Nothing in this section may be construed to require the employment of any person against a licensee's judgment.

(3) In consultation with law enforcement personnel, the secretary of social and health services and the secretary of health shall investigate, or cause to be investigated, the conviction record and the protection proceeding record information under this chapter of the staff of each agency or facility under their respective jurisdictions seeking licensure or relicensure. An individual responding to a criminal background inquiry request from his or her employer or potential employer shall disclose the information about his or her criminal history under penalty of perjury. The secretaries shall use the information solely for the purpose of determining eligibility for licensure or relicensure. Criminal justice agencies shall provide the secretaries such information as they may have and that the secretaries may require for such purpose.

Passed the Senate February 11, 1998.

Passed the House February 27, 1998.

Approved by the Governor March 11, 1998.

Filed in Office of Secretary of State March 11, 1998.

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## CHAPTER 11

[Senate Bill 6158]

### WASHINGTON STATE WHEAT COMMISSION—ELIMINATING DUPLICATE AUTHORITY

AN ACT Relating to eliminating duplicate authority for the Washington state wheat commission; and repealing RCW 15.63.010, 15.63.020, 15.63.030, 15.63.040, 15.63.050, 15.63.060, 15.63.070, 15.63.080, 15.63.090, 15.63.100, 15.63.110, 15.63.120, 15.63.130, 15.63.140, 15.63.150, 15.63.160, 15.63.170, 15.63.180, 15.63.190, 15.63.200, 15.63.210, 15.63.220, 15.63.230, 15.63.240, 15.63.900, 15.63.910, and 15.63.920.

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

**NEW SECTION.** Sec. 1. The following acts or parts of acts are each repealed:

(1) RCW 15.63.010 and 1961 c 87 s 1;

- (2) RCW 15.63.020 and 1961 c 87 s 2;
- (3) RCW 15.63.030 and 1961 c 87 s 3;
- (4) RCW 15.63.040 and 1961 c 87 s 4;
- (5) RCW 15.63.050 and 1961 c 87 s 5;
- (6) RCW 15.63.060 and 1961 c 87 s 6;
- (7) RCW 15.63.070 and 1961 c 87 s 7;
- (8) RCW 15.63.080 and 1961 c 87 s 8;
- (9) RCW 15.63.090 and 1961 c 87 s 9;
- (10) RCW 15.63.100 and 1961 c 87 s 10;
- (11) RCW 15.63.110 and 1975-'76 2nd ex.s. c 34 s 18 & 1961 c 87 s 11;
- (12) RCW 15.63.120 and 1961 c 87 s 12;
- (13) RCW 15.63.130 and 1961 c 87 s 13;
- (14) RCW 15.63.140 and 1961 c 87 s 14;
- (15) RCW 15.63.150 and 1961 c 87 s 15;
- (16) RCW 15.63.160 and 1961 c 87 s 16;
- (17) RCW 15.63.170 and 1961 c 87 s 17;
- (18) RCW 15.63.180 and 1961 c 87 s 18;
- (19) RCW 15.63.190 and 1961 c 87 s 19;
- (20) RCW 15.63.200 and 1961 c 87 s 20;
- (21) RCW 15.63.210 and 1961 c 87 s 21;
- (22) RCW 15.63.220 and 1961 c 87 s 22;
- (23) RCW 15.63.230 and 1961 c 87 s 23;
- (24) RCW 15.63.240 and 1972 ex.s. c 8 s 1, 1971 c 81 s 55, & 1961 c 87 s 24;
- (25) RCW 15.63.900 and 1961 c 87 s 25;
- (26) RCW 15.63.910 and 1961 c 87 s 26; and
- (27) RCW 15.63.920 and 1961 c 87 s 27.

Passed the Senate February 11, 1998.

Passed the House February 27, 1998.

Approved by the Governor March 11, 1998.

Filed in Office of Secretary of State March 11, 1998.

## CHAPTER 12

[Senate Bill 6159]

### WASHINGTON LAND BANK—ELIMINATING AUTHORITY

AN ACT Relating to eliminating authority for the Washington land bank; and repealing RCW 31.30.010, 31.30.020, 31.30.030, 31.30.040, 31.30.050, 31.30.060, 31.30.070, 31.30.080, 31.30.090, 31.30.100, 31.30.110, 31.30.120, 31.30.130, 31.30.150, 31.30.160, 31.30.170, 31.30.180, 31.30.190, 31.30.200, 31.30.210, 31.30.220, 31.30.230, 31.30.240, 31.30.250, 31.30.260, 31.30.270, and 31.30.900.

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

**NEW SECTION.** Sec. 1. The following acts or parts of acts are each repealed:

- (1) RCW 31.30.010 and 1994 c 92 s 237 & 1986 c 284 s 1;

- (2) RCW 31.30.020 and 1994 c 92 s 238 & 1986 c 284 s 2;
- (3) RCW 31.30.030 and 1986 c 284 s 3;
- (4) RCW 31.30.040 and 1986 c 284 s 4;
- (5) RCW 31.30.050 and 1986 c 284 s 5;
- (6) RCW 31.30.060 and 1986 c 284 s 6;
- (7) RCW 31.30.070 and 1986 c 284 s 7;
- (8) RCW 31.30.080 and 1987 c 29 s 1 & 1986 c 284 s 8;
- (9) RCW 31.30.090 and 1986 c 284 s 9;
- (10) RCW 31.30.100 and 1986 c 284 s 10;
- (11) RCW 31.30.110 and 1986 c 284 s 11;
- (12) RCW 31.30.120 and 1986 c 284 s 12;
- (13) RCW 31.30.130 and 1986 c 284 s 13;
- (14) RCW 31.30.150 and 1994 c 92 s 239 & 1987 c 420 s 5;
- (15) RCW 31.30.160 and 1994 c 92 s 240 & 1987 c 420 s 6;
- (16) RCW 31.30.170 and 1994 c 92 s 241 & 1987 c 420 s 7;
- (17) RCW 31.30.180 and 1994 c 92 s 242 & 1987 c 420 s 8;
- (18) RCW 31.30.190 and 1994 c 92 s 243 & 1987 c 420 s 9;
- (19) RCW 31.30.200 and 1994 c 92 s 244 & 1987 c 420 s 10;
- (20) RCW 31.30.210 and 1994 c 92 s 245 & 1987 c 420 s 11;
- (21) RCW 31.30.220 and 1987 c 420 s 12;
- (22) RCW 31.30.230 and 1994 c 92 s 246 & 1987 c 420 s 13;
- (23) RCW 31.30.240 and 1994 c 92 s 247 & 1987 c 420 s 14;
- (24) RCW 31.30.250 and 1994 c 92 s 248 & 1987 c 420 s 15;
- (25) RCW 31.30.260 and 1994 c 92 s 249 & 1987 c 420 s 16;
- (26) RCW 31.30.270 and 1994 c 92 s 250 & 1987 c 420 s 17; and
- (27) RCW 31.30.900 and 1986 c 284 s 16.

Passed the Senate February 11, 1998.

Passed the House February 27, 1998.

Approved by the Governor March 11, 1998.

Filed in Office of Secretary of State March 11, 1998.

**CHAPTER 13**

[Senate Bill 6171]

**LOANS FOR PROJECTS RECOMMENDED BY THE PUBLIC WORKS BOARD**

AN ACT Relating to authorizing loans for projects recommended by the public works board; creating a new section; and declaring an emergency.

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

**NEW SECTION.** Sec. 1. Pursuant to chapter 43.155 RCW, the following project loans recommended by the public works board are authorized to be made with funds previously appropriated from the public works assistance account.

- (1) City of Aberdeen—domestic water project—design and construct a facility for water filtration, storage improvements, and corrosion treatment for the city's water supply, and water metering . . . . . \$7,000,000

- (2) Asotin County—solid waste project—construct two additional solid waste disposal cells in the county's regional landfill . . . . . \$1,851,000
- (3) City of Bainbridge Island—road project—resurfacing Wing Point Way NE from Ferncliff Avenue NE to Fairview Avenue. Install 800 feet of closed drainage facilities, roadside ditching, culverts, construction of a keystone wall, 2 inches of asphalt overlay, 4 feet wide bicycle and pedestrian paths . . \$761,562
- (4) City of Black Diamond—domestic water project—installation and construction of 1.25 miles of 12-inch water main, a package pump station, and other necessary appurtenances . . . . . \$540,000
- (5) City of Blaine—road project—reconstruct 6,800 linear feet of street to residential standards of 28-foot wide asphalt pavement with curb/gutter and sidewalks with ADA-complying ramps, and 12-inch storm drainage and catch basins and storm water detention/treatment . . . . . \$1,650,600
- (6) City of Bonney Lake—domestic water project—construct new 2.5-3 million gallon reservoir, Ponderosa No. 2, and appurtenances necessary for compatibility . . . . . \$281,597
- (7) City of Bothell—domestic water project—replace approximately 19,000 linear feet of existing asbestos cement and steel transmission and distribution water lines with ductile iron pipelines and appurtenances . . . . . \$2,400,000
- (8) City of Bremerton—domestic water project—construct a 36-inch water supply main from Gorst to Reservoir No. 4 to convey surface water from the Union River Watershed . . . . . \$3,150,000
- (9) Bryn Mawr-Lakeridge Water and Sewer District—sanitary sewer project—replacing public and private portion of approximately 180 side sewers for the purpose of infiltration and inflow removal . . . . . \$433,600
- (10) City of Buckley—sanitary sewer project—install 1,000 linear feet of 8-inch sanitary sewer main, 5,700 linear feet of 4-inch side sewer main, and appurtenances . . . . . \$655,041
- (11) City of Burlington—sanitary sewer project—conversion of the wastewater treatment plant to a contact-stabilization activated sludge plant, addition of ultraviolet-light disinfection of effluent and an aerobic digestion of waste sludge, expansion of the effluent pump station, and addition of two outfall pipes to the Skagit River . . . . . \$1,258,200
- (12) Chelan County PUD No. 1—domestic water project—extension of a 12-inch transmission water main from the Sunnyslope service area, small residential booster pump station, bored crossing of US 2, and a bridge crossing of the Wenatchee River . . . . . \$1,026,000
- (13) Chelan County PUD No. 1—domestic water project—construct a new 100,000 gallon reservoir and approximately 12,000 linear feet of 6-inch water main . . . . . \$469,700
- (14) Coal Creek Utility District—domestic water project—replacement of two water mains crossing I-405 and replacement of approximately 8,000 linear feet of water main in the Newport Woods and SE 88th Street areas . . . . \$771,750

(15) City of College Place—sanitary sewer project—design and construct a sequencing batch reactor treatment plant, new concrete basins and associated equipment, operations and laboratory building, emergency generator, preliminary treatment and influent pump station, upgrade existing components, and ultraviolet disinfection . . . . . \$7,000,000

(16) Town of Coulee Dam—domestic water project—establish a new ground water source and install water meters at all points of sale . . . . . \$710,316

(17) Cross Valley Water District—domestic water project—construction/ installation of approximately 7,500 linear feet of 18-inch transmission main and a 1.2 mgd pump station . . . . . \$3,874,500

(18) City of Dayton—sanitary sewer project—modifications and rehabilitation of the wastewater treatment plant, including conversion of a secondary clarifier to a primary clarifier, improvements to the trickling filter and new pumps, expansion of wet well, construction of new secondary clarifiers, new headworks, an aerobic digester restoration, and refurbishing of the control building and chlorine disinfection system . . . . . \$2,550,000

(19) Douglas County—storm sewer project—construct 7,200 linear feet of 72-inch intercept pipe from East Wenatchee to the Columbia River including a catch basin/lateral system to collect tributary runoff along the interceptor. Also includes the realignment of the channel in Eastmont Park, a 36-inch pipe will be constructed with an intake structure, intermediate manholes, catch basins, and laterals to collect the runoff . . . . . \$4,868,910

(20) Town of Eatonville—domestic water project—install 2,270 linear feet of 10-inch water main between Lynch Creek Road and Weyerhauser Road and install 2,060 linear feet of 10-inch water main between Lynch Creek Road and Center Street East . . . . . \$270,000

(21) City of Enumclaw—domestic water project—replace approximately 163,500 linear feet of steel transmission and distribution lines with ductile iron pipe. Include fire hydrants, valves, and associated street patching and overlays . . . . . \$7,000,000

(22) Fall City Water District—domestic water project—replace a 4-inch water main in the downtown alley between 334th Place SE and Preston-Fall City Road from 328th Way SE to the Raging River Bridge . . . . . \$181,300

(23) City of Ferndale—sanitary sewer project—replace a pump station and force main with gravity interceptor, construct a new influent pump station, laboratory, and headworks at the wastewater treatment plant . . . . \$3,104,280

(24) Grays Harbor County Water District No. 1—domestic water project—construct a 500,000 gallon reservoir and 4,000 linear feet of 12-inch transmission main to connect the reservoir to the distribution system . . . . . \$564,665

(25) Highline Water District—domestic water project—replacing approximately 11,500 linear feet of undersized water mains at three separate project locations. Work will include installation of all required hydrants, valves, and appurtenances, approximately 6,000 linear feet of steel main replacement, and restoration of the project area . . . . . \$780,850

- (26) Highline Water District—domestic water project—construct a 7.7 million gallon storage reservoir, as well as construction of a water booster pump station, 27,350 linear feet of water main and associated connections to the distribution system . . . . . \$4,748,625
- (27) City of Issaquah—bridge project—replace the existing, single-span prestressed concrete girder and slab bridge with a two-span bridge of approximately 180 feet in length . . . . . \$1,143,103
- (28) City of Kelso—bridge project—replace a 700 foot long bridge with a 1,200 foot long structure with legal load bearing capacity, seismic standards, 5 foot shoulders for bicycles, and emergency pull off area and raised sidewalks for pedestrians . . . . . \$5,051,000
- (29) City of Kennewick—road project—reconstruct three key arterial streets in Kennewick, South Vancouver Street-Kennewick to West 10th, Kellogg Street-10th to Clearwater, and 27th Avenue-Dayton Place to Kent . . . . \$3,817,100
- (30) King County Water District No. 90—domestic water project—replace approximately 16,000 linear feet of aging and failing steel water mains with ductile iron pipe and provide additional funding for acquisition of land for a water treatment facility . . . . . \$958,300
- (31) King County Water District No. 119—domestic water project—installing 23,000 linear feet of water main from the end of the district's existing system and construct a 150,000 gallon storage tank . . . . . \$1,143,000
- (32) King County Water District No. 119—domestic water project—install a water transmission main and storage facilities to convey water from the city of Carnation's system for service of the District's customers . . . . . \$1,689,300
- (33) Town of La Conner—storm sewer project—reconstruction and replacement of the existing storm water collection system, installation of a pump station, and biofiltration treatment facility . . . . . \$888,300
- (34) City of Lacey—road project—reconstruction of Marvin Road from a 2-lane roadway to a principal arterial, construct Willamette Drive, and reconfigure Hogum Bay Road . . . . . \$4,193,776
- (35) City of Lake Forest Park—storm sewer project—replace existing undersized Lyon and McAleer Creek culverts at two locations: 33rd Avenue Northeast and NE 185th Street . . . . . \$168,300
- (36) City of Langley—storm sewer project—construct a storm drain interceptor on Park Avenue to divert surface water flow from the downtown area . . . . . \$178,708
- (37) Lewis County—domestic water project—construction of a water and sewer system including improvements to an existing reservoir, new reservoir and booster pump, installation of some 23,000 linear feet of various diameters of water main, 20 hydrants, and service connections in public right-of-way. The sewer project will replace existing septic systems with a STEP collection system, construction of a wastewater treatment plant, effluent outfall, and over 20,000 linear feet of sewer line . . . . . \$1,120,000



- (38) Town of Lind—domestic water project—replacement of a filter type wastewater treatment facility with a nondischarging lagoon system . \$718,400
- (39) City of Long Beach—domestic water project—construction of a 1 million gallon water reservoir and about 4,700 linear feet of transmission main from the water treatment plant to an existing booster pump station . . . . . \$1,160,214
- (40) Midway Sewer District—sanitary sewer project—replace gaseous chlorine disinfection system with ultraviolet irradiation, submarine outfall and South 260th Street pump station wet well, and emergency power supply at treatment plant and 4 pump stations . . . . . \$1,654,382
- (41) City of Morton—sanitary sewer project—replacement of about 1,300 linear feet of sewer line with side sewers in the right-of-way, manholes, and necessary roadway restoration . . . . . \$226,000
- (42) Mukilteo Water District—domestic water project—construct a 750,000 gallon reservoir to replace the existing No. 1 water tank . . . . . \$939,400
- (43) City of Napavine—domestic water project—construction of a new 125,000 gallon elevated reservoir, adding approximately 900 linear feet of 8-inch transmission main to loop a portion of the system, and the replacement of up to 1,500 linear feet of existing undersized water mains . . . . . \$506,500
- (44) Northeast Sammamish Sewer and Water District—sanitary sewer project—replace and relocate the District's lift station No. 3 near Evans Creek . . . . . \$1,249,000
- (45) City of Omak—sanitary sewer project—improvements to sewer treatment plant that include treatment, disinfection, and sludge handling system, replace three deteriorated sewer collection lines in Ironwood Street, Bartlett Street Alley, and Benton Street . . . . . \$2,439,900
- (46) City of Omak—domestic water project—water system improvements which include increased chlorine contact time at two wells, add an additional transmission main across the Okanogan River, rehabilitate the Riverside Avenue booster station, connect the Hillcrest neighborhood to the upper pressure zone, and construct a 250,000 gallon reservoir in northeast Omak . . . . . \$897,200
- (47) City of Port Townsend—domestic water project—construct a new 20-inch water supply main, construct a 1.52 million gallon water storage facility, and upgrade Sparling Well and Treatment Plant . . . . . \$2,376,378
- (48) City of Quincy—domestic water project—water system improvements consisting of drilling a new well, steel main replacement, well backup power generation, and Beezley Hills Reservoir recoating . . . . . \$1,137,600
- (49) City of Ritzville—sanitary sewer project—construct a new wastewater treatment plant to replace the existing facility . . . . . \$1,674,785
- (50) Town of Rosalia—domestic water project—construct a new 300,000 gallon water reservoir . . . . . \$117,000
- (51) City of Royal City—sanitary sewer project—upgrades to the existing facilities along with constructing new facilities . . . . . \$1,713,735

- (52) Saratoga Water District—domestic water project—replacement of Bell's Beach water main, including approximately 9,800 linear feet of existing steel water mains . . . . . \$490,234
- (53) City of Seattle—bridge project—seismic retrofit for the Fremont Bridge includes replacement of the existing steel deck grating, installation of truss protection railing and rehabilitate the centerlock, and rebalancing of bridge leaves . . . . . \$1,500,000
- (54) City of Shelton—sanitary sewer project—sanitary sewer system improvements in the central business district and surrounding areas, which will bring the system into compliance with the Department of Ecology's National Pollutant Discharge Elimination System (NPDES) permit . . . . . \$3,296,700
- (55) Shoreline Wastewater Management District—sanitary sewer project—rehabilitate and modify three wastewater lift stations . . . . . \$668,700
- (56) Silver Lake Water District—domestic water project—seismic upgrade to District's Reservoir No. 1 . . . . . \$300,600
- (57) Snohomish County—road project—relocation of approximately 8,000 linear feet of Lowell Snohomish River Road away from the Snohomish River . . . . . \$500,000
- (58) Spokane County Water District No. 3—domestic water project—replace approximately 14,680 linear feet of existing water main with ductile iron main, including reconnections, replacement and abandonment of water service lines, mains, reservoir drain lines, and other elements as needed . . . . . \$543,150
- (59) City of Spokane—sanitary sewer project—Upgrading and/or replacement of the existing solids handling processes at the city's Advanced Wastewater Treatment Plant, including upgrades to the flotation and gravity thickeners and their structures, replacement of three of six belt filter presses, construction of sidestream storage, and treatment facilities with pumping and control equipment . . . . . \$2,395,484
- (60) City of Spokane—domestic water project—construction of approximately 16,000 linear feet of 24-inch ductile iron waterline along Havana Street and Sprague Avenue, including valves, connections, blow-off and air valve assemblies, trench excavation, a link below a rail line, pavement removal and restoration, and traffic control devices . . . . . \$1,764,000
- (61) City of Spokane—domestic water project—replacement of some 12,000 linear feet of riveted steel water transmission main with ductile iron pipe along Waterworks Avenue. It includes valves, connections to existing pipes, blow-off and air valve assemblies, trench excavation, casing under a rail line, pavement removal and restoration, and traffic control . . . . . \$2,880,000
- (62) Stevens County PUD No. 1—domestic water project—replacement of two failed water storage tanks with one new 60,000 gallon tank at the Deer Lake water system . . . . . \$67,300
- (63) City of Sultan—domestic water project—construction of a new 1.5 million gallon storage reservoir, backwash pumping, piping, and pH adjustment for finish water . . . . . \$796,775

- (64) SunLand Water District—sanitary sewer project—upgrading existing sewer treatment plant, enabling the system to produce an effluent of near drinking water quality, Class A, in accordance with current state standards . . . \$910,900
- (65) City of Tacoma—road project—Thea Foss Waterway, and neighborhood street related projects to improve safety and circulation in neighborhoods and revitalize downtown neighborhoods . . . . . \$10,000,000
- (66) City of Tumwater—domestic water project—construct water treatment facilities to address contamination from Trichloroethylene (TCE), and meet Safe Drinking Water Act Requirements. Site is currently listed on the federal Superfund list . . . . . \$1,019,900
- (67) Val Vue Sewer District—sanitary sewer project—construct alternate wastewater discharge connections, rerouting wastewater flows to an alternate treatment facility, eliminate pump station No. 17, and rehabilitate approximately 600 linear feet of sewer main on Glendale Way . . . . . \$257,040
- (68) Town of Wilbur—domestic water project—construct a 750,000 gallon reservoir, replace approximately 13,000 linear feet of failing, undersized water mains, replace the pump, piping, and electrical at Well No. 4, and meter the remaining unmetered services . . . . . \$903,000
- (69) Town of Wilkeson—sanitary sewer project—expand and upgrade wastewater treatment plant, including improvements to the influent plant lift station, new headworks, the conversion of the plant to an activated sludge plant, addition of two new secondary clarifiers, conversion from chlorine to ultraviolet light disinfection of effluent, new laboratory building, new sludge handling facilities, and lift station improvements . . . . . \$482,040
- (70) Town of Winthrop—domestic water project—upgrade water main along White Avenue, construct a transmission main under the Methow River, and construct a reservoir and appurtenant on the eastside of town . . . . . \$314,152
- (71) Woodinville Water District—sanitary sewer project—replacement of approximately 3,000 linear feet of damaged sewer main along 144th Avenue NE and north of NE 190th Street . . . . . \$312,130
- (72) Emergency Public Works Loans—as authorized by RCW 43.155.065 . . . . . \$2,205,326
- Total of section one . . . . . \$126,671,308

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

Passed the Senate February 10, 1998.  
 Passed the House February 27, 1998.  
 Approved by the Governor March 11, 1998.  
 Filed in Office of Secretary of State March 11, 1998.

CHAPTER 14

[Senate Bill 6192]

STATE INVESTMENT BOARD OPERATION

AN ACT Relating to the operation of the state investment board; and amending RCW 43.33A.140, 41.50.085, 43.84.061, and 43.84.150.

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

Sec. 1. RCW 43.33A.140 and 1981 c 3 s 14 are each amended to read as follows:

~~((Any investments made by))~~ The state investment board shall ~~((be made with the exercise of that degree of judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived))~~ invest and manage the assets entrusted to it with reasonable care, skill, prudence, and diligence under circumstances then prevailing which a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an activity of like character and purpose.

The board shall:

(1) Consider investments not in isolation, but in the context of the investment of the particular fund as a whole and as part of an overall investment strategy, which should incorporate risk and return objectives reasonably suited for that fund; and

(2) Diversify the investments of the particular fund unless, because of special circumstances, the board reasonably determines that the purposes of that fund are better served without diversifying. However, no corporate fixed-income issue or common stock holding may exceed three percent of the cost or six percent of the market value of the assets of that fund.

Sec. 2. RCW 41.50.085 and 1977 ex.s. c 251 s 7 are each amended to read as follows:

Any investments under RCW 43.84.150 by the state investment board shall be made ~~((with the exercise of that degree of judgment and care, under circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived))~~ in accordance with the standards established in RCW 43.33A.140.

Sec. 3. RCW 43.84.061 and 1965 ex.s. c 104 s 6 are each amended to read as follows:

Any investments made hereunder by the state investment board shall be made ~~((with the exercise of that degree of judgment and care, under circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation but for investment,~~

considering the probable safety of their capital as well as the probable income to be derived)) in accordance with the standards established in RCW 43.33A.140.

Sec. 4. RCW 43.84.150 and 1981 c 98 s 1 are each amended to read as follows:

Except where otherwise specifically provided by law, the state investment board shall have full power to invest, reinvest, manage, contract, or sell or exchange investments acquired. Investments shall be made in accordance with RCW 43.33A.140 and investment policy duly established and published by the state investment board. ~~((All funds shall be sufficiently diversified and no corporate fixed income issue or common stock holding may exceed three percent of the cost or six percent of the market value of the assets of any fund.))~~

Passed the Senate February 11, 1998.

Passed the House February 27, 1998.

Approved by the Governor March 11, 1998.

Filed in Office of Secretary of State March 11, 1998.

## CHAPTER 15

[Senate Bill 6202]

### SECURITIES ACT OF WASHINGTON—CONFORMANCE WITH FEDERAL LAW

AN ACT Relating to the securities act of Washington; amending RCW 21.20.005, 21.20.020, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.110, 21.20.140, 21.20.310, 21.20.320, 21.20.330, 21.20.340, 21.20.370, 21.20.410, 21.20.430, and 21.20.540; adding new sections to chapter 21.20 RCW; and prescribing penalties.

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

Sec. 1. RCW 21.20.005 and 1994 c 256 s 3 are each amended to read as follows:

The definitions set forth in this section shall apply throughout this chapter, unless the context otherwise requires:

(1) "Director" means the director of financial institutions of this state.

(2) "Salesperson" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities~~((, but))~~. "Salesperson" does not include an individual who represents an issuer in (a) effecting a transaction in a security exempted by RCW 21.20.310 (1), (2), (3), (4), (9), (10), (11), (12), or (13), (b) effecting transactions exempted by RCW 21.20.320 unless otherwise expressly required by the terms of the exemption, or (c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for that person's own account. "Broker-dealer" does not include (a) a salesperson, issuer, bank, savings institution, or trust company, (b) a person who has no place of business in this state if the person effects transactions in this state exclusively with or through the

issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (c) a person who has no place of business in this state if during any period of twelve consecutive months that person does not direct more than fifteen offers to sell or to buy into or make more than five sales in this state in any manner to persons other than those specified in ~~((subsection))~~ (b) ~~((above))~~ of this subsection.

(4) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(5) "Full business day" means all calendar days, excluding therefrom Saturdays, Sundays, and all legal holidays, as defined by statute.

(6) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, (a) provide the foregoing investment advisory services to others for compensation as part of a business or (b) hold themselves out as providing the foregoing investment advisory services to others for compensation. Investment adviser shall also include any person who holds himself out as a financial planner.

"Investment adviser" does not include (a) a bank, savings institution, or trust company, (b) a lawyer, accountant, certified public accountant licensed under chapter 18.04 RCW, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession, (c) a broker-dealer or its salesperson whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for them, (d) a publisher of any bona fide newspaper, news magazine, news column, newsletter, or business or financial publication ~~((of general, regular, and paid circulation))~~ or service, whether communicated in hard copy form, by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client, (e) a radio or television station, (f) a person whose advice, analyses, or reports relate only to securities exempted by RCW 21.20.310(1), (g) ~~((a person who has no place of business in this state if (i) that person's only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trust, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during any period of twelve consecutive months that person does not direct business communications into this state in any manner to more than five clients other than~~

~~those specified in clause (i) above~~) an investment adviser representative, or (h) such other persons not within the intent of this paragraph as the director may by rule or order designate.

(7) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type; the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(8) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(9) "Person" means an individual, a corporation, a partnership, a limited liability company, a limited liability partnership, an association, a joint-stock company, a trust where the interest of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(10) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(11) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," ~~((and))~~ "Investment Company Act of 1940," and "Investment Advisers Act of 1940" means the federal statutes of those names as amended before or after June 10, 1959.

(12) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; investment of money or other consideration in the risk capital of a venture with the expectation of some valuable benefit to the investor where the investor does not receive the right to exercise practical and actual control over the managerial decisions of the venture; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; charitable gift annuity; any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or

index of securities, including any interest therein or based on the value thereof; or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing; or any sale of or indenture, bond or contract for the conveyance of land or any interest therein where such land is situated outside of the state of Washington and such sale or its offering is not conducted by a real estate broker licensed by the state of Washington. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

(13) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(14) "Investment adviser representative" means ~~((a person retained or employed by an investment adviser to solicit clients or offer the services of the investment adviser or manage the accounts of said clients))~~ any partner, officer, director, or a person occupying similar status or performing similar functions, or other individual, who is employed by or associated with an investment adviser, and who does any of the following:

(a) Makes any recommendations or otherwise renders advice regarding securities;

(b) Manages accounts or portfolios of clients;

(c) Determines which recommendation or advice regarding securities should be given;

(d) Solicits, offers, or negotiates for the sale of or sells investment advisory services; or

(e) Supervises employees who perform any of the functions under (a) through (d) of this subsection.

(15) "Relatives," as used in RCW 21.20.310(11) includes:

(a) A member's spouse;

(b) Parents of the member or the member's spouse;

(c) Grandparents of the member or the member's spouse;

(d) Natural or adopted children of the member or the member's spouse;

(e) Aunts and uncles of the member or the member's spouse; and

(f) First cousins of the member or the member's spouse.

(16) "Customer" means a person other than a broker-dealer or investment adviser.

(17) "Federal covered security" means any security defined as a covered security in the Securities Act of 1933.

(18) "Federal covered adviser" means any person registered as an investment adviser under section 203 of the Investment Advisers Act of 1940.

**Sec. 2.** RCW 21.20.020 and 1959 c 282 s 2 are each amended to read as follows:



It is unlawful for any person who receives any consideration from another party primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

(1) To employ any device, scheme, or artifice to defraud the other person;  
(~~or~~)

(2) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person;

(3) To act as principal for his or her own account, knowingly to sell any security to or purchase any security from a client, or act as a broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the execution of such transaction the capacity in which he or she is acting and obtaining the consent of the client to such transaction; or

(4) To engage in any dishonest or unethical practice as the director may define by rule.

Sec. 3. RCW 21.20.040 and 1994 c 256 s 5 are each amended to read as follows:

(1) It is unlawful for any person to transact business in this state as a broker-dealer or salesperson, unless ~~((he or she))~~: (a) The person is registered under this chapter~~((--PROVIDED, That an exemption))~~; (b) the person is exempted from registration as a broker-dealer or salesperson to sell or resell condominium units sold in conjunction with an investment contract~~((;))~~ as may be provided by rule ~~((or regulation))~~ or order of the director as to persons who are licensed pursuant to the provisions of chapter 18.85 RCW~~((;))~~; (c) the person is a salesperson who satisfies the requirements of section 15(h)(2) of the Securities Exchange Act of 1934 and effects in this state no transactions other than those described by section 15(h)(3) of the Securities Exchange Act of 1934; or (d) the person is a salesperson effecting transactions in open-end investment company securities sold at net asset value without any sales charges.

(2) It is unlawful for any broker-dealer or issuer to employ a salesperson unless the salesperson is registered or exempted from registration.

(3) It is unlawful for any person to transact business in this state as an investment adviser or investment adviser representative unless: (a) The person is so registered or exempt from registration under this chapter~~((--or))~~; (b) the person ~~((is registered as a broker-dealer under this chapter, or (e)))~~ has no place of business in this state and (i) the person's only clients in this state are investment advisers registered under this chapter, federal covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, ((or insurance companies. It is unlawful for any person to transact business in this state as an investment adviser representative or for any investment adviser to employ an investment adviser representative unless such person is registered)) employee benefit plans with assets of not less than one million dollars, or governmental agencies or instrumentalities, whether acting for themselves or as trustees with

investment control, or (ii) during the preceding twelve-month period the person has had fewer than six clients who are residents of this state other than those specified in (b)(i) of this subsection; (c) the person is an investment adviser to an investment company registered under the Investment Company Act of 1940; (d) the person is a federal covered adviser and the person has complied with requirements of RCW 21.20.050; or (e) the person is excepted from the definition of investment adviser under section 202(a)(11) of the Investment Advisers Act of 1940.

~~((2))~~ (4) It is unlawful for any person, other than a federal covered adviser, to hold himself or herself out as, or otherwise represent that he or she is a "financial planner", "investment counselor", or other similar term, as may be specified in rules adopted by the director, unless the person is registered as an investment adviser or investment adviser representative, is exempt from registration under RCW 21.20.040(1), or is excluded from the definition of investment adviser under RCW 21.20.005(6).

(5)(a) It is unlawful for any person registered or required to be registered as an investment adviser under this chapter to employ, supervise, or associate with an investment adviser representative unless such investment adviser representative is registered as an investment adviser representative under this chapter.

(b) It is unlawful for any federal covered adviser or any person required to be registered as an investment adviser under section 203 of the Investment Advisers Act of 1940 to employ, supervise, or associate with an investment adviser representative having a place of business located in this state, unless such investment adviser representative is registered or is exempted from registration under this chapter.

Sec. 4. RCW 21.20.050 and 1994 c 256 s 6 are each amended to read as follows:

(1) A broker-dealer, salesperson, investment adviser, or investment adviser representative may apply for registration by filing with the director or his authorized agent an application together with a consent to service of process in such form as the director shall prescribe and payment of the fee prescribed in RCW 21.20.340.

(2) A federal covered adviser shall file such documents as the director may, by rule or otherwise, require together with a consent to service of process and the payment of the fee prescribed in RCW 21.20.340.

Sec. 5. RCW 21.20.060 and 1995 c 46 s 1 are each amended to read as follows:

The application shall contain whatever information the director requires concerning such matters as:

- (1) The applicant's form and place of organization;
- (2) The applicant's proposed method of doing business;
- (3) The qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser~~(-)~~; any partner, officer, or director, or any

person occupying a similar status or performing similar functions; or any person directly or indirectly controlling the broker-dealer or investment adviser;

(4) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(5) The applicant's financial condition and history; ~~((and))~~

(6) The address of the principal place of business of the applicant and the addresses of all branch offices of the applicant in this state; and

(7) Any information to be furnished or disseminated to any client or prospective client, if the applicant is an investment adviser.

The director may by rule or otherwise require a minimum capital for registered broker-dealers ~~((and investment advisers or prescribe a ratio between net capital and aggregate indebtedness by type or classification)), not to exceed the limitations provided in section 15 of the Securities Exchange Act of 1934, and establish minimum financial requirements for investment advisers, not to exceed the limitations provided in section 222 of the Investment Advisers Act of 1940, which may include different requirements for investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over those funds or securities, and may ((by rule)) allow registrants to maintain a surety bond of appropriate amount as an alternative method of compliance with minimum capital or ((net capital)) financial requirements.~~

Sec. 6. RCW 21.20.070 and 1981 c 272 s 2 are each amended to read as follows:

If the application meets the requirements for registration, as the director may by rule or otherwise determine, and no denial order is in effect and no proceeding is pending under RCW 21.20.110, the director shall make the registration ((becomes)) effective ((when the applicant has successfully passed a written examination as prescribed by rule or order of the director with the advice of the advisory committee, or has satisfactorily demonstrated that the applicant is exempt from the written examination requirements of this section)).

Sec. 7. RCW 21.20.080 and 1994 c 256 s 8 are each amended to read as follows:

Registration of a broker-dealer, salesperson, investment adviser representative, or investment adviser shall be effective for a one-year period unless the director by rule or order provides otherwise. The director by rule or order may schedule registration or renewal so that all registrations and renewals expire December 31st. The director may adjust the fee for registration or renewal proportionately. The registration of a salesperson or investment adviser representative is not effective during any period when the salesperson is not employed by or associated with an issuer or a registered broker-dealer or when the investment adviser representative is not employed by or associated with ~~((a registered))~~ an investment adviser registered under this chapter or a federal covered adviser who has made a notice filing pursuant to RCW 21.20.050. To be

employed by or associated with an issuer, broker-dealer, federal covered adviser, or investment adviser within the meaning of this section ((written)) notice, either in writing or in some other format as the director may by rule or otherwise specify, must be given to the director. When a salesperson begins or terminates ((an)) employment or association with an issuer or registered broker-dealer, the salesperson and the issuer or broker-dealer shall promptly notify the director. When an investment adviser representative registered under this chapter begins or terminates ((an)) employment or association with ((a-registered)) an investment adviser((-)) registered under this chapter or a federal covered adviser required to make a notice filing pursuant to RCW 21.20.050, the investment adviser representative and ((registered)) investment adviser or federal covered adviser shall promptly notify the director.

Notwithstanding any provision of law to the contrary, the director may, from time to time, extend the duration of a licensing period for the purpose of staggering renewal periods. Such extension of a licensing period shall be by rule ((or-regulation)) adopted in accordance with the provisions of chapter 34.05 RCW. Such rules ((and-regulations)) may provide a method for imposing and collecting such additional proportional fee as may be required for the extended period.

**Sec. 8.** RCW 21.20.090 and 1995 c 46 s 2 are each amended to read as follows:

Registration of a broker-dealer, salesperson, investment adviser representative, or investment adviser may be renewed by filing with the director or his or her authorized agent prior to the expiration thereof an application containing such information as the director may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesperson, investment adviser representative, or investment adviser filed with the director or his or her authorized agent by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer or investment adviser such financial reports as the director may ((by-rule)) prescribe by rule or otherwise. The reporting requirements so prescribed for a broker-dealer may not exceed the limitations provided in section 15 of the Securities Exchange Act of 1934. A registered broker-dealer or investment adviser may file an application for registration of a successor, and the ((administrator)) director may at his or her discretion grant or deny the application.

**Sec. 9.** RCW 21.20.100 and 1959 c 282 s 10 are each amended to read as follows:

(1) Every registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records, except with respect to securities exempt under RCW 21.20.310(1), which ((accounts)) books and other records shall be prescribed by the director by rule or otherwise. ((All records so required shall be preserved for three years unless the director prescribes otherwise for particular types of records:)) The recordmaking

and recordkeeping requirements prescribed for a broker-dealer shall not exceed the limitations provided in section 15 of the Securities Exchange Act of 1934. The recordmaking and recordkeeping requirements prescribed for a registered investment adviser shall not exceed the limitations provided in section 222 of the Investment Advisers Act of 1940. All records required to be made and kept by a registered investment adviser shall be preserved for such a period as the director prescribes by rule or otherwise.

(2) With respect to investment advisers, the director may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients.

(3) If the information contained in any document filed with the director is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under RCW 21.20.090.

(4) All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special or other examinations by representatives of the director, within or without this state, as the director deems necessary or appropriate in the public interest or for the protection of investors.

Sec. 10. RCW 21.20.110 and 1997 c 58 s 856 are each amended to read as follows:

(1) The director may by order deny, suspend, or revoke registration of any broker-dealer, salesperson, investment adviser representative, or investment adviser; censure or fine the registrant or an officer, director, partner, or person occupying similar functions for a registrant; or restrict or limit a registrant's function or activity of business for which registration is required in this state; if the director finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

~~((1))~~ (a) Has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false, or misleading with respect to any material fact;

~~((2))~~ (b) Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act, or any provision of chapter 21.30 RCW or any rule or order thereunder;

~~((3))~~ (c) Has been convicted, within the past five years, of any misdemeanor involving a security, or a commodity contract or commodity option as defined in RCW 21.30.010, or any aspect of the securities or investment commodities business, or any felony involving moral turpitude;

~~((4))~~ (d) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities or investment commodities business;

~~((5))~~ (e) Is the subject of an order of the director denying, suspending, or revoking registration as a broker-dealer, salesperson, investment adviser, or investment adviser representative;

~~((6))~~ (f) Is the subject of an order entered within the past five years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesperson, or a commodity broker-dealer or sales representative, or the substantial equivalent of those terms as defined in this chapter or by the commodity futures trading commission denying or revoking registration as a commodity merchant as defined in RCW 21.30.010, or is the subject of an order of suspension or expulsion from membership in or association with a self-regulatory organization registered under the securities exchange act of 1934 or the federal commodity exchange act, or is the subject of a United States post office fraud order; but ~~((a))~~ (i) the director may not institute a revocation or suspension proceeding under this clause more than one year from the date of the order relied on, and ~~((b))~~ (ii) the director may not enter any order under this clause on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

~~((7))~~ (g) Has engaged in dishonest or unethical practices in the securities or investment commodities business;

~~((8))~~ (h) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature; but the director may not enter an order against a broker-dealer or investment adviser under this clause without a finding of insolvency as to the broker-dealer or investment adviser;

~~((9))~~ (i) Has not complied with a condition imposed by the director under RCW 21.20.100, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

~~((10)(a))~~ (j) Has failed to supervise reasonably a salesperson or an investment adviser representative. For the purposes of this subsection, no person fails to supervise reasonably another person, if:

(i) There are established procedures, and a system for applying those procedures, that would reasonably be expected to prevent and detect, insofar as practicable, any violation by another person of this chapter, or a rule or order under this chapter; and

(ii) The supervising person has reasonably discharged the duties and obligations required by these procedures and system without reasonable cause to believe that another person was violating this chapter or rules or orders under this chapter.

~~((b))~~ (2) The director may issue a summary order pending final determination of a proceeding under this section upon a finding that it is in the public interest and necessary or appropriate for the protection of investors.

(3) The director may not impose a fine under this section except after notice and opportunity for hearing. The fine imposed under this section may not exceed five thousand dollars for each act or omission that constitutes the basis for issuing the order. If a petition for judicial review has not been timely filed under RCW 34.05.542(2), a certified copy of the director's order requiring payment of the fine may be filed in the office of the clerk of the superior court in any county of this state. The clerk shall treat the order of the director in the same manner as a judgment of the superior court. The director's order so filed has the same effect as a judgment of the superior court and may be recorded, enforced, or satisfied in like manner.

The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

**Sec. 11.** RCW 21.20.140 and 1975 1st ex.s. c 84 s 10 are each amended to read as follows:

It is unlawful for any person to offer or sell any security in this state (~~except securities exempt under RCW 21.20.310 or when sold in transactions exempt under RCW 21.20.320;~~) unless ~~((such))~~; (1) The security is registered by coordination or qualification under this chapter; (2) the security or transaction is exempted under RCW 21.20.310 or 21.20.320; or (3) the security is a federal covered security, and, if required, the filing is made and a fee is paid in accordance with section 12 of this act.

**NEW SECTION. Sec. 12.** A new section is added to chapter 21.20 RCW to read as follows:

(1) The director, by rule or otherwise, may require the filing of any or all of the following documents and the payment of the following fees with respect to a federal covered security under section 18(b)(2) of the Securities Act of 1933:

(a) Prior to the initial offer of such a federal covered security in this state, all documents that are part of the current federal registration statement filed with the U.S. Securities and Exchange Commission under the Securities Act of 1933, together with a consent to service of process signed by the issuer and the fee prescribed by RCW 21.20.340;

(b) After the initial offer of such a federal covered security in this state, all documents that are part of an amendment to a current federal registration

statement filed with the U.S. Securities and Exchange Commission under the Securities Act of 1933 and all fees prescribed by RCW 21.20.340; and

(c) An annual or periodic report of the value of such federal covered securities offered in this state, together with the fee prescribed by RCW 21.20.340.

(2) With respect to any security that is a federal covered security under section 18(b)(4)(D) of the Securities Act of 1933, the director, by rule or otherwise, may require the issuer to file a notice on SEC Form D, together with a consent to service of process signed by the issuer and the fee prescribed pursuant to RCW 21.20.340, no later than fifteen days after the first sale of such a federal covered security in this state.

(3) The director, by rule or otherwise, may require the filing of any document filed with the U.S. Securities and Exchange Commission under the Securities Act of 1933, with respect to a federal covered security under section 18(b)(3) or (4) of the Securities Act of 1933 and/or the payment of the fee prescribed pursuant to RCW 21.20.340.

(4) The director may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under section 18(b)(1) of the Securities Act of 1933, if the director finds that there is a failure to comply with any requirement established under this section.

(5) The director, by rule or otherwise, may waive any or all of the provisions of this section.

**Sec. 13.** RCW 21.20.310 and 1995 c 46 s 4 are each amended to read as follows:

RCW 21.20.140 through 21.20.300, inclusive, and section 12 of this act do not apply to any of the following securities:

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing; but this exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless such payments are made or unconditionally guaranteed by a person whose securities are exempt from registration by subsections (7) or (8) of this section: **PROVIDED**, That the director, by rule or order, may exempt any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise if the director finds that registration with respect to such securities is not necessary in the public interest and for the protection of investors.

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor; but this exemption does not include any security payable solely from revenues to be



received from a nongovernmental industrial or commercial enterprise unless such payments shall be made or unconditionally guaranteed by a person whose securities are exempt from registration by subsections (7) or (8) of this section.

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank or trust company organized or supervised under the laws of any state.

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state.

(5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of this state and authorized to do and actually doing business in this state.

(6) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state.

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (a) subject to the jurisdiction of the interstate commerce commission; (b) a registered holding company under the public utility holding company act of 1935 or a subsidiary of such a company within the meaning of that act; (c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or (d) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect of equipment conditionally sold or leased to a railroad or public utility, if other securities issued by such railroad or public utility would be exempt under this subsection.

(8) Any security which meets the criteria for investment grade securities that the director may adopt by rule.

(9) Any prime quality negotiable commercial paper not intended to be marketed to the general public and not advertised for sale to the general public that is of a type eligible for discounting by federal reserve banks, that arises out of a current transaction or the proceeds of which have been or are to be used for a current transaction, and that evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal.

(10) Any security issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan if: (a) The plan meets the requirements for qualification as a pension, profit sharing, or stock bonus plan under section 401 of the internal revenue code, as an incentive stock option plan under section 422 of the internal revenue code, as a nonqualified incentive stock option plan adopted with or as a supplement to an incentive stock option plan under section 422 of the internal revenue code, or as an employee stock purchase

plan under section 423 of the internal revenue code; or (b) the director is notified in writing with a copy of the plan thirty days before offering the plan to employees in this state. In the event of late filing of notification the director may upon application, for good cause excuse such late filing if he or she finds it in the public interest to grant such relief.

(11) Any security issued by any person organized and operated as a nonprofit organization as defined in RCW 84.36.800(4) exclusively for religious, educational, fraternal, or charitable purposes and which nonprofit organization also possesses a current tax exempt status under the laws of the United States, which security is offered or sold only to persons who, prior to their solicitation for the purchase of said securities, were members of, contributors to, or listed as participants in, the organization, or their relatives, if such nonprofit organization first files a notice specifying the terms of the offering and the director does not by order disallow the exemption within the next ten full business days: PROVIDED, That no offerings may be made until expiration of the ten full business days. Every such nonprofit organization which files a notice of exemption of such securities shall pay a filing fee as set forth in RCW 21.20.340(11) as now or hereafter amended.

The notice shall consist of the following:

- (a) The name and address of the issuer;
- (b) The names, addresses, and telephone numbers of the current officers and directors of the issuer;
- (c) A short description of the security, price per security, and the number of securities to be offered;
- (d) A statement of the nature and purposes of the organization as a basis for the exemption under this section;
- (e) A statement of the proposed use of the proceeds of the sale of the security; and
- (f) A statement that the issuer shall provide to a prospective purchaser written information regarding the securities offered prior to consummation of any sale, which information shall include the following statements: (i) "ANY PROSPECTIVE PURCHASER IS ENTITLED TO REVIEW FINANCIAL STATEMENTS OF THE ISSUER WHICH SHALL BE FURNISHED UPON REQUEST."; (ii) "RECEIPT OF NOTICE OF EXEMPTION BY THE WASHINGTON ADMINISTRATOR OF SECURITIES DOES NOT SIGNIFY THAT THE ADMINISTRATOR HAS APPROVED OR RECOMMENDED THESE SECURITIES, NOR HAS THE ADMINISTRATOR PASSED UPON THE OFFERING. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE."; and (iii) "THE RETURN OF THE FUNDS OF THE PURCHASER IS DEPENDENT UPON THE FINANCIAL CONDITION OF THE ORGANIZATION."

(12) Any charitable gift annuities issued by a board of a state university, regional university, or of the state college.

(13) Any charitable gift annuity issued by an insurer or institution holding a certificate of exemption under RCW 48.38.010.

**Sec. 14.** RCW 21.20.320 and 1989 c 307 s 34 are each amended to read as follows:

The following transactions are exempt from RCW 21.20.040 through 21.20.300 and section 12 of this act except as expressly provided:

(1) Any isolated transaction, or sales not involving a public offering, whether effected through a broker-dealer or not; or any transaction effected in accordance with any rule by the director establishing a nonpublic offering exemption pursuant to this subsection where registration is not necessary or appropriate in the public interest or for the protection of investors.

(2) Any nonissuer ~~((distribution of an outstanding security by a registered broker-dealer if (a) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or (b) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security))~~ transaction by a registered salesperson of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940 pursuant to any rule adopted by the director.

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the director may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period.

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit. A bond or other evidence of indebtedness is not offered and sold as a unit if the transaction involves:

(a) A partial interest in one or more bonds or other evidences of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels; or

(b) One of multiple bonds or other evidences of indebtedness secured by one or more real or chattel mortgages or deeds of trust, or agreements for the sale of real estate or chattels, sold to more than one purchaser as part of a single plan of financing; or

(c) A security including an investment contract other than the bond or other evidence of indebtedness.

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter.

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

(9) Any transaction (~~(pursuant to an offering not exceeding five hundred thousand dollars)~~) effected in accordance with the terms and conditions of any rule adopted by the director if:

(a) The aggregate offering amount does not exceed five million dollars; and

(b) The director finds that registration is not necessary in the public interest and for the protection of investors.

(10) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten, and (c) no payment is made by any subscriber.

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state, or (b) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days.

(12) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act.

(13) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock.

(14) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets.

(15) The offer or sale by a registered broker-dealer, or a person exempted from the registration requirements pursuant to RCW 21.20.040, acting either as

principal or agent, of securities previously sold and distributed to the public: PROVIDED, That:

(a) Such securities are sold at prices reasonably related to the current market price thereof at the time of sale, and, if such broker-dealer is acting as agent, the commission collected by such broker-dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics;

(b) Such securities do not constitute the whole or a part of an unsold allotment to or subscription or participation by such broker-dealer as an underwriter of such securities or as a participant in the distribution of such securities by the issuer, by an underwriter or by a person or group of persons in substantial control of the issuer or of the outstanding securities of the class being distributed; and

(c) The security has been lawfully sold and distributed in this state or any other state of the United States under this or any act regulating the sale of such securities.

(16) Any transaction by a mutual or cooperative association meeting the requirements of (a) and (b) of this subsection:

(a) The transaction:

(i) Does not involve advertising or public solicitation; or

(ii) Involves advertising or public solicitation, and:

(A) The association first files a notice of claim of exemption on a form prescribed by the director specifying the terms of the offer and the director does not by order deny the exemption within the next ten full business days; or

(B) The association is an employee cooperative and identifies itself as an employee cooperative in advertising or public solicitation.

(b) The transaction involves an instrument or interest, that:

(i)(A) Qualifies its holder to be a member or patron of the association;

(B) Represents a contribution of capital to the association by a person who is or intends to become a member or patron of the association;

(C) Represents a patronage dividend or other patronage allocation; or

(D) Represents the terms or conditions by which a member or patron purchases, sells, or markets products, commodities, or services from, to, or through the association; and

(ii) Is nontransferable except in the case of death, operation of law, bona fide transfer for security purposes only to the association, a bank, or other financial institution, intrafamily transfer, or transfer to an existing member or person who will become a member and, in the case of an instrument, so states conspicuously on its face.

(17) Any transaction effected in accordance with any rule adopted by the director establishing a limited offering exemption which furthers objectives of compatibility with federal exemptions and uniformity among the states, provided that in adopting any such rule the director may require that no commission or other remuneration be paid or given to any person, directly or indirectly, for

effecting sales unless the person is registered under this chapter as a broker-dealer or salesperson.

**Sec. 15.** RCW 21.20.330 and 1994 c 256 s 19 are each amended to read as follows:

Every applicant for registration as a broker-dealer, investment adviser, investment adviser representative, or salesperson under this chapter (~~and~~), every issuer that files an application to register or files a claim of exemption from registration to offer a security in this state through any person acting on an agency basis in the common law sense, and every person filing pursuant to RCW 21.20.050 or section 12 of this act shall file with the director or with such person as the director may by rule or order designate, in such form as the director by rule prescribes, an irrevocable consent appointing the director or the director's successor in office to be the attorney of the applicant to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or the applicant's successor, executor or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration, or notice filing pursuant to RCW 21.20.050 or section 12 of this act, need not file another. Service may be made by leaving a copy of the process in the office of the director, but it is not effective unless (1) the plaintiff, who may be the director in a suit, action, or proceeding instituted by him or her, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address of the respondent or defendant on file with the director, and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

**Sec. 16.** RCW 21.20.340 and 1995 c 46 s 5 are each amended to read as follows:

The following fees shall be paid in advance under the provisions of this chapter:

(1)(a) For registration of securities by qualification, the fee shall be one hundred dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state, based on offering price, plus one-twentieth of one percent for any excess over one hundred thousand dollars which are to be offered during that year: PROVIDED, HOWEVER, That an issuer may upon the payment of a fifty-dollar fee renew for one additional twelve-month period only the unsold portion for which the registration fee has been paid.

(b) For the offer of a federal covered security that (i) is an exempt security pursuant to section 3(2) of the Securities Act of 1933, and (ii) would not qualify for the exemption or a discretionary order of exemption pursuant to RCW 21.20.310(1), the fee shall be one hundred dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state, based on offering

price, plus one-twentieth of one percent for any excess over one hundred thousand dollars which are to be offered during that year: PROVIDED, HOWEVER, That an issuer may upon the payment of a fifty-dollar fee renew for one additional twelve-month period only the unsold portion for which the filing fee has been paid.

(2)(a) For registration by coordination of securities issued by an investment company, other than a closed-end company, as those terms are defined in the Investment Company Act of 1940, the fee shall be one hundred dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state, based on offering price, plus one-twentieth of one percent for any excess over one hundred thousand dollars which are to be offered in this state during that year: PROVIDED, HOWEVER, That an issuer may upon the payment of a fifty-dollar fee renew for ~~((an))~~ one additional twelve-month period the unsold portion for which the registration fee has been paid.

(b) For each offering by an investment company, other than a closed-end company, as those terms are defined in the Investment Company Act of 1940, making a notice filing pursuant to section 12(1) of this act, the initial filing fee shall be one hundred dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state, based on offering price, plus one-twentieth of one percent for any excess over one hundred thousand dollars which are to be offered in this state during that year. The amount offered in this state during the year may be increased by paying one-twentieth of one percent of the desired increase, based on offering price, prior to the sale of securities to be covered by the fee: PROVIDED, HOWEVER, That an issuer may upon the payment of a fifty-dollar fee renew for one additional twelve-month period the unsold portion for which the filing fee has been paid.

(3)(a) For registration by coordination of securities not covered by subsection (2) of this section, the initial filing fee shall be one hundred dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state, based on offering price, plus one-fortieth of one percent for any excess over one hundred thousand dollars for the first twelve-month period plus one hundred dollars for each additional twelve months in which the same offering is continued. The amount offered in this state during the year may be increased by paying one-fortieth of one percent of the desired increase, based on offering price, prior to the sale of securities to be covered by the fee.

(b) For each offering by a closed-end investment company, making a notice filing pursuant to section 12(1) of this act, the initial filing fee shall be one hundred dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state, based on offering price, plus one-fortieth of one percent for any excess over one hundred thousand dollars for the first twelve-month period plus one hundred dollars for each additional twelve months in which the same offering is continued. The amount offered in this state during the year may be increased by paying one-fortieth of one percent of the desired increase, based on offering price, prior to the sale of securities to be covered by the fee.

(4) For filing annual financial statements, the fee shall be twenty-five dollars.

(5)(a) For filing an amended offering circular after the initial registration permit has been granted or pursuant to section 12(1)(b) of this act, the fee shall be ten dollars.

(b) For filing a report under RCW 21.20.270(1) or section 12(1)(c) of this act, the fee shall be ten dollars.

(6)(a) For registration of a broker-dealer or investment adviser, the fee shall be one hundred fifty dollars for original registration and seventy-five dollars for each annual renewal. When an application is denied or withdrawn the director shall retain one-half of the fee.

(b) For a federal covered adviser filing pursuant to RCW 21.20.050, the fee shall be one hundred fifty dollars for original notification and seventy-five dollars for each annual renewal. A fee shall not be assessed in connection with converting an investment adviser registration to a notice filing when the investment adviser becomes a federal covered adviser.

(7) For registration of a salesperson or investment adviser representative, the fee shall be forty dollars for original registration with each employer and twenty dollars for each annual renewal. When an application is denied or withdrawn the director shall retain one-half of the fee.

(8) If a registration, or filing pursuant to RCW 21.20.050, of a broker-dealer, salesperson, investment adviser, federal covered adviser, or investment adviser representative is not renewed on or before December 31st of each year the renewal is delinquent. The director by rule or order may set and assess a fee for delinquency not to exceed two hundred dollars. Acceptance by the director of an application for renewal after December 31st is not a waiver of delinquency. A delinquent application for renewal will not be accepted for filing after March 1st.

(9)(a) For the transfer of a broker-dealer license to a successor, the fee shall be fifty dollars.

(b) For the transfer of a salesperson license from a broker-dealer or issuer to another broker-dealer or issuer, the transfer fee shall be twenty-five dollars.

(c) For the transfer of an investment adviser representative license from an investment adviser to another investment adviser, the transfer fee shall be twenty-five dollars.

(d) For the transfer of an investment adviser license to a successor, the fee shall be fifty dollars.

(10)(a) The director may provide by rule for the filing of notice of claim of exemption under RCW 21.20.320 (1), (9), and (17) and set fees accordingly not to exceed three hundred dollars.

(b) For the filing required by section 12(2) of this act, the fee shall be three hundred dollars.

(11) For filing of notification of claim of exemption from registration pursuant to RCW 21.20.310(11), as now or hereafter amended, the fee shall be fifty dollars for each filing.

(12) For rendering interpretative opinions, the fee shall be thirty-five dollars.



(13) For certified copies of any documents filed with the director, the fee shall be the cost to the department.

(14) For a duplicate license the fee shall be five dollars.

All fees collected under this chapter shall be turned in to the state treasury and are not refundable, except as herein provided.

**Sec. 17.** RCW 21.20.370 and 1994 c 256 s 21 are each amended to read as follows:

The director in his or her discretion (1) may annually, or more frequently, make such public or private investigations within or without this state as the director deems necessary to determine whether any registration should be granted, denied or revoked or whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder, (2) may engage in the detection and identification of criminal activities subject to this chapter. (3) may require or permit any person to file a statement in writing, under oath or otherwise as the director may determine, as to all the facts and circumstances concerning the matter to be investigated, and ~~((3))~~ (4) may publish information concerning any violation of this chapter or any rule or order hereunder.

**NEW SECTION.** **Sec. 18.** A new section is added to chapter 21.20 RCW to read as follows:

(1) A person who, in an administrative action by the director, is found to have knowingly or recklessly violated any provision of this chapter, or any rule or order under this chapter, may be fined, after notice and opportunity for hearing, in an amount not to exceed five thousand dollars for each violation.

(2) If a petition for judicial review has not been timely filed under RCW 34.05.542(2), a certified copy of the director's order requiring payment of the fine may be filed in the office of the clerk of the superior court in any county of this state. The clerk shall treat the order of the director in the same manner as a judgment of the superior court. The director's order so filed has the same effect as a judgment of the superior court and may be recorded, enforced, or satisfied in like manner.

**Sec. 19.** RCW 21.20.410 and 1979 ex.s. c 68 s 29 are each amended to read as follows:

(1) The director may refer such evidence as may be available concerning violations of this chapter or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may in his or her discretion, with or without such a reference, institute the appropriate criminal proceedings under this chapter.

(2) The director may render such assistance as the prosecuting attorney requests regarding a reference.

**Sec. 20.** RCW 21.20.430 and 1986 c 304 s I are each amended to read as follows:

(1) Any person, who offers or sells a security in violation of any provisions of RCW 21.20.010 (~~(or)~~), 21.20.140 (1) or (2), or 21.20.180 through 21.20.230, is liable to the person buying the security from him or her, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at eight percent per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he or she no longer owns the security. Damages are the amount that would be recoverable upon a tender less (a) the value of the security when the buyer disposed of it and (b) interest at eight percent per annum from the date of disposition.

(2) Any person who buys a security in violation of the provisions of RCW 21.20.010 is liable to the person selling the security to him or her, who may sue either at law or in equity to recover the security, together with any income received on the security, upon tender of the consideration received, costs, and reasonable attorneys' fees, or if the security cannot be recovered, for damages. Damages are the value of the security when the buyer disposed of it, and any income received on the security, less the consideration received for the security, plus interest at eight percent per annum from the date of disposition, costs, and reasonable attorneys' fees.

(3) Every person who directly or indirectly controls a seller or buyer liable under subsection (1) or (2) above, every partner, officer, director or person who occupies a similar status or performs a similar function of such seller or buyer, every employee of such a seller or buyer who materially aids in the transaction, and every broker-dealer, salesperson, or person exempt under the provisions of RCW 21.20.040 who materially aids in the transaction is also liable jointly and severally with and to the same extent as the seller or buyer, unless such person sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(4)(a) Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

(b) No person may sue under this section more than three years after the contract of sale for any violation of the provisions of RCW 21.20.140 (1) or (2) or 21.20.180 through 21.20.230, or more than three years after a violation of the provisions of RCW 21.20.010, either was discovered by such person or would have been discovered by him or her in the exercise of reasonable care. No person may sue under this section if the buyer or seller receives a written rescission offer, which has been passed upon by the director before suit and at a time when he or she owned the security, to refund the consideration paid together with interest at eight percent per annum from the date of payment, less the amount of any income received on the security in the case of a buyer, or plus the amount of income received on the security in the case of a seller.

(5) No person who has made or engaged in the performance of any contract in violation of any provision of this chapter or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this chapter or any rule or order hereunder is void.

(6) Any tender specified in this section may be made at any time before entry of judgment.

(7) Notwithstanding subsections (1) through (6) of this section, if an initial offer or sale of securities that are exempt from registration under RCW 21.20.310 is made by this state or its agencies, political subdivisions, municipal or quasi-municipal corporations, or other instrumentality of one or more of the foregoing and is in violation of RCW 21.20.010(2), and any such issuer, member of the governing body, committee member, public officer, director, employee, or agent of such issuer acting on its behalf, or person in control of such issuer, member of the governing body, committee member, public officer, director, employee, or agent of such person acting on its behalf, materially aids in the offer or sale, such person is liable to the purchaser of the security only if the purchaser establishes scienter on the part of the defendant. The word "employee" or the word "agent," as such words are used in this subsection, do not include a bond counsel or an underwriter. Under no circumstances whatsoever shall this subsection be applied to require purchasers to establish scienter on the part of bond counsels or underwriters. The provisions of this subsection are retroactive and apply to any action commenced but not final before July 27, 1985. In addition, the provisions of this subsection apply to any action commenced on or after July 27, 1985.

**Sec. 21.** RCW 21.20.540 and 1959 c 282 s 54 are each amended to read as follows:

In any proceeding under this chapter, the burden of proving an exemption ~~((or))~~, an exception from a definition, or a preemption of a provision of this chapter is upon the person claiming it.

Passed the Senate February 12, 1998.

Passed the House February 27, 1998.

Approved by the Governor March 11, 1998.

Filed in Office of Secretary of State March 11, 1998.

## CHAPTER 16

[Substitute Senate Bill 6285]

### FIRE PROTECTION DISTRICTS—IMPOSITION OF BENEFIT CHARGES

AN ACT Relating to benefit charges imposed by fire protection districts; and amending RCW 52.18.010, 52.18.050, and 84.55.092.

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

**Sec. 1.** RCW 52.18.010 and 1990 c 294 s 1 are each amended to read as follows:

The board of fire commissioners of a fire protection district may by resolution, for fire protection district purposes authorized by law, fix and impose a benefit charge on personal property and improvements to real property which are located within the fire protection district on the date specified and which have or will receive the benefits provided by the fire protection district, to be paid by the owners of the properties: **PROVIDED**, That a benefit charge shall not apply to personal property and improvements to real property owned or used by any recognized religious denomination or religious organization as, or including, a sanctuary or for purposes related to the bona fide religious ministries of the denomination or religious organization, including schools and educational facilities used for kindergarten, primary, or secondary educational purposes or for institutions of higher education and all grounds and buildings related thereto, but not including personal property and improvements to real property owned or used by any recognized religious denomination or religious organization for business operations, profit-making enterprises, or activities not including use of a sanctuary or related to kindergarten, primary, or secondary educational purposes or for institutions of higher education. The aggregate amount of such benefit charges in any one year shall not exceed an amount equal to sixty percent of the operating budget for the year in which the benefit charge is to be collected: **PROVIDED**, That it shall be the duty of the county legislative authority or authorities of the county or counties in which the fire protection district is located to make any necessary adjustments to assure compliance with such limitation and to immediately notify the board of fire commissioners of any changes thereof.

A benefit charge imposed shall be reasonably proportioned to the measurable benefits to property resulting from the services afforded by the district. It is acceptable to apportion the benefit charge to the values of the properties as found by the county assessor or assessors modified generally in the proportion that fire insurance rates are reduced or entitled to be reduced as the result of providing the services. Any other method that reasonably apportions the benefit charges to the actual benefits resulting from the degree of protection, which may include but is not limited to the distance from regularly maintained fire protection equipment, the level of fire prevention services provided to the properties, or the need of the properties for specialized services, may be specified in the resolution and shall be subject to contest on the ground of unreasonable or capricious action or action in excess of the measurable benefits to the property resulting from services afforded by the district. The board of fire commissioners may determine that certain properties or types or classes of properties are not receiving measurable benefits based on criteria they establish by resolution. A benefit charge authorized by this chapter shall not be applicable to the personal property or improvements to real property of any individual, corporation, partnership, firm, organization, or association maintaining a fire department and whose fire protection and training system has been accepted by a fire insurance underwriter maintaining a fire

protection engineering and inspection service authorized by the state insurance commissioner to do business in this state, but such property may be protected by the fire protection district under a contractual agreement.

For administrative purposes, the benefit charge imposed on any individual property may be compiled into a single charge, provided that the district, upon request of the property owner, provide an itemized list of charges for each measurable benefit included in the charge.

Sec. 2. RCW 52.18.050 and 1990 c 294 s 5 are each amended to read as follows:

(1) Any benefit charge authorized by this chapter shall not be effective unless a proposition to impose the benefit charge is approved by a sixty percent majority of the voters of the district voting at a general election or at a special election called by the district for that purpose, held within the fire protection district. An election held pursuant to this section shall be held not more than twelve months prior to the date on which the first such charge is to be assessed: PROVIDED, That a benefit charge approved at an election shall not remain in effect for a period of more than six years nor more than the number of years authorized by the voters if fewer than six years unless subsequently reapproved by the voters.

(2) The ballot shall be submitted so as to enable the voters favoring the authorization of a fire protection district benefit charge to vote "Yes;" and those opposed thereto to vote "No," and the ballot shall be:

"Shall . . . . county fire protection district No. . . . be authorized to impose benefit charges each year for . . . (insert number of years not to exceed six) years, not to exceed an amount equal to sixty percent of its operating budget, and be prohibited from imposing an additional property tax under RCW 52.16.160?

YES NO

(3) Districts renewing the benefit charge may elect to use the following alternative ballot:

"Shall . . . . county fire protection district No. . . . be authorized to continue voter-authorized benefit charges each year for . . . (insert number of years not to exceed six) years, not to exceed an amount equal to sixty percent of its operating budget, and be prohibited from imposing an additional property tax under RCW 52.16.160?

YES NO

Sec. 3. RCW 84.55.092 and 1988 c 274 s 4 are each amended to read as follows:

The regular property tax levy for each taxing district other than the state may be set at the amount which would be allowed otherwise under this chapter if the regular property tax levy for the district for taxes due in prior years beginning

with 1986 had been set at the full amount allowed under this chapter including any levy authorized under RCW 52.16.160 that would have been imposed but for the limitation in RCW 52.18.065, applicable upon imposition of the benefit charge under chapter 52.18 RCW.

The purpose of this section is to remove the incentive for a taxing district to maintain its tax levy at the maximum level permitted under this chapter, and to protect the future levy capacity of a taxing district that reduces its tax levy below the level that it otherwise could impose under this chapter, by removing the adverse consequences to future levy capacities resulting from such levy reductions.

Passed the Senate February 11, 1998.

Passed the House February 27, 1998.

Approved by the Governor March 11, 1998.

Filed in Office of Secretary of State March 11, 1998.

## CHAPTER 17

[Senate Bill 6303]

### SERVICE CREDIT—RESTRICTIONS ON RESTORATION

AN ACT Relating to restrictions on the restoration of service credit; adding a new section to chapter 41.26 RCW; adding a new section to chapter 41.32 RCW; adding new sections to chapter 41.40 RCW; and adding a new section to chapter 43.43 RCW.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 41.26 RCW under the subchapter heading "provisions applicable to plan I and plan II" to read as follows:

Notwithstanding any provision to the contrary, persons who fail to:

- (1) Establish allowable membership service not previously credited;
- (2) Restore all or a part of that previously credited membership service represented by withdrawn contributions; or
- (3) Restore service credit represented by a lump sum payment in lieu of benefits, before the deadline established by statute, may do so under the conditions set forth in RCW 41.50.165.

**NEW SECTION.** Sec. 2. A new section is added to chapter 41.32 RCW under the subchapter heading "provisions applicable to plan I, plan II, and plan III" to read as follows:

Notwithstanding any provision to the contrary, persons who fail to:

- (1) Establish allowable membership service not previously credited;
- (2) Restore all or a part of that previously credited membership service represented by withdrawn contributions; or
- (3) Restore service credit represented by a lump sum payment in lieu of benefits, before the deadline established by statute, may do so under the conditions set forth in RCW 41.50.165.

**NEW SECTION.** Sec. 3. A new section is added to chapter 41.40 RCW under the subchapter heading "provisions applicable to plan I and plan II" to read as follows:

Notwithstanding any provision to the contrary, persons who fail to:

- (1) Establish allowable membership service not previously credited;
- (2) Restore all or a part of that previously credited membership service represented by withdrawn contributions; or
- (3) Restore service credit represented by a lump sum payment in lieu of benefits, before the deadline established by statute, may do so under the conditions set forth in RCW 41.50.165.

**NEW SECTION.** Sec. 4. A new section is added to chapter 41.40 RCW under the subchapter heading "provisions applicable to plan I" to read as follows:

Notwithstanding any provision to the contrary, employees of Washington State University who first established membership in the public employees' retirement system plan I under RCW 41.40.500 through 41.40.507, as existing on July 28, 1991, and RCW 41.40.508, as existing on June 7, 1990, may purchase, as set forth under RCW 41.50.165, plan I service credit for the period of service at Washington State University prior to his or her contributory membership in the Washington State University retirement system.

**NEW SECTION.** Sec. 5. A new section is added to chapter 43.43 RCW to read as follows:

Notwithstanding any provision to the contrary, persons who fail to:

- (1) Establish allowable membership service not previously credited;
- (2) Restore all or a part of that previously credited membership service represented by withdrawn contributions; or
- (3) Restore service credit represented by a lump sum payment in lieu of benefits, before the deadline established by statute, may do so under the conditions set forth in RCW 41.50.165.

Passed the Senate February 11, 1998.

Passed the House February 27, 1998.

Approved by the Governor March 11, 1998.

Filed in Office of Secretary of State March 11, 1998.

## CHAPTER 18

[Senate Bill 6483]

### CIGARETTE AND TOBACCO TAXES—TRANSFER OF ENFORCEMENT AUTHORITY

AN ACT Relating to the transfer of the enforcement authority for cigarette and tobacco taxes from the department of revenue to the liquor control board; and amending RCW 66.44.010.

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

**Sec. 1.** RCW 66.44.010 and 1987 c 202 s 224 are each amended to read as follows:

(1) All county and municipal peace officers are hereby charged with the duty of investigating and prosecuting all violations of this title, and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all fines imposed for violations of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor shall belong to the county, city or town wherein the court imposing the fine is located, and shall be placed in the general fund for payment of the salaries of those engaged in the enforcement of the provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

(2) In addition to any and all other powers granted, the board shall have the power to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor.

(3) In addition to the other duties under this section, the board shall enforce chapters 82.24 and 82.26 RCW.

(4) The board may appoint and employ, assign to duty and fix the compensation of, officers to be designated as liquor enforcement officers. Such liquor enforcement officers shall have the power, under the supervision of the board, to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. They shall have the power and authority to serve and execute all warrants and process of law issued by the courts in enforcing the penal provisions of this title or of any penal law of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and the provisions of chapters 82.24 and 82.26 RCW. They shall have the power to arrest without a warrant any person or persons found in the act of violating any of the penal provisions of this title or of any penal law of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and the provisions of chapters 82.24 and 82.26 RCW.

Passed the Senate February 13, 1998.

Passed the House February 27, 1998.

Approved by the Governor March 11, 1998.

Filed in Office of Secretary of State March 11, 1998.

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## CHAPTER 19

[Substitute Senate Bill 6489]

### DISTRICT COURT ELECTIONS—LIMITING PRIMARY ELECTIONS

AN ACT Relating to district court elections; and amending RCW 29.21.015 and 3.34.050.

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



**Sec. 1.** RCW 29.21.015 and 1996 c 324 s 1 are each amended to read as follows:

(1) No primary may be held for any single position in any city, town, ~~((or))~~ district, or district court, as required by RCW 29.21.010, if, after the last day allowed for candidates to withdraw, there are no more than two candidates filed for the position. The county auditor shall, as soon as possible, notify all the candidates so affected that the office for which they filed will not appear on the primary ballot.

(2) No primary may be held for the office of commissioner of a park and recreation district or for the office of cemetery district commissioner.

(3) Names of candidates for offices that do not appear on the primary ballot shall be printed upon the general election ballot in the manner specified by RCW 29.30.025.

**Sec. 2.** RCW 3.34.050 and 1989 c 227 s 3 are each amended to read as follows:

At the general election in November 1962 and quadrennially thereafter, there shall be elected by the voters of each district court district the number of judges authorized for the district by the district court districting plan. Judges shall be elected for each district and electoral district, if any, by the qualified electors of the district in the same manner as judges of courts of record are elected, except as provided in chapter 29.21 RCW. Not less than ten days before the time for filing declarations of candidacy for the election of judges for districts entitled to more than one judge, the county auditor shall designate each such office of district judge to be filled by a number, commencing with the number one and numbering the remaining offices consecutively. At the time of the filing of the declaration of candidacy, each candidate shall designate by number which one, and only one, of the numbered offices for which he or she is a candidate and the name of the candidate shall appear on the ballot for only the numbered office for which the candidate filed a declaration of candidacy.

Passed the Senate February 11, 1998.

Passed the House February 27, 1998.

Approved by the Governor March 11, 1998.

Filed in Office of Secretary of State March 11, 1998.

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## CHAPTER 20

[Substitute Senate Bill 6507]

### STATE COSMETOLOGY, BARBERING, ESTHETICS, AND MANICURING BOARD— MEMBERSHIP—EXPIRATION ELIMINATION

AN ACT Relating to eliminating the expiration of the state cosmetology, barbering, esthetics, and manicuring advisory board; and amending RCW 18.16.050.

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

Sec. 1. RCW 18.16.050 and 1997 c 179 s 1 are each amended to read as follows:

(1) There is created a state cosmetology, barbering, esthetics, and manicuring advisory board consisting of ~~((seven))~~ nine members appointed by the director. These ~~((seven))~~ members of the board shall include: A representative of a private cosmetology school ~~((and)); a representative of a public vocational technical school involved in cosmetology training~~ ~~((with the balance made up of currently practicing licensees who have been engaged in the practice of manicuring, esthetics, barbering, or cosmetology for at least three years. One member of the board shall be));~~ a consumer who is unaffiliated with the cosmetology, barbering, esthetics, or manicuring industry; and six members who are currently practicing licensees who have been engaged in the practice of manicuring, esthetics, barbering, or cosmetology for at least three years. ~~((On June 30, 1995, the director shall appoint seven new members to the board. These new))~~ Members shall serve a term of three years. ~~((The director shall appoint two new members including: (a) One representative with employee supervisory experience from a chain salon having ten or more salons; and (b) one representative from the industry at large who has substantial salon and school experience. The board shall cease to exist on June 30, 1998. Any members serving on the advisory board as of July 1, 1995, or who are appointed after July 27, 1997, are eligible to be reappointed, should the advisory board be extended beyond June 30, 1998.))~~ Any board member may be removed for just cause. The director may appoint a new member to fill any vacancy on the board for the remainder of the unexpired term.

(2) The board appointed on June 30, 1995, together with the director or the director's designee, shall conduct a thorough review of educational requirements, licensing requirements, and enforcement and health standards for persons engaged in cosmetology, barbering, esthetics, or manicuring and shall prepare a report to be delivered to the governor, the director, and the chairpersons of the governmental operations committees of the house of representatives and the senate. The report must summarize their findings and make recommendations, including, if appropriate, recommendations for legislation reforming and restructuring the regulation of cosmetology, barbering, esthetics, and manicuring.

(3) Board members shall be entitled to compensation pursuant to RCW 43.03.240 for each day spent conducting official business and to reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060.

(4) The board may seek the advice and input of officials from the following state agencies: (a) The work force training and education coordinating board; (b) the department of employment security; (c) the department of labor and industries; (d) the department of health; (e) the department of licensing; and (f) the department of revenue.

Passed the Senate February 13, 1998.  
 Passed the House February 27, 1998.  
 Approved by the Governor March 11, 1998.  
 Filed in Office of Secretary of State March 11, 1998.

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## CHAPTER 21

[Substitute Senate Bill 6575]

### JOINT ADMINISTRATIVE RULES REVIEW COMMITTEE—EXTENSION OF POWERS

AN ACT Relating to extending the powers of the joint administrative rules review committee; and amending RCW 34.05.630, 34.05.640, and 34.05.655.

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

**Sec. 1.** RCW 34.05.630 and 1996 c 318 s 4 are each amended to read as follows:

(1) All rules required to be filed pursuant to RCW 34.05.380, and emergency rules adopted pursuant to RCW 34.05.350, are subject to selective review by the ((legislature)) committee.

(2) All agency policy and interpretive statements, guidelines, and documents that are of general applicability, or their equivalents, are subject to selective review by the ((legislature)) committee to determine whether or not a statement, guideline, or document that is of general applicability, or its equivalent, is being used as a rule that has not been adopted in accordance with all applicable provisions of law.

(3) If the rules review committee finds by a majority vote of its members: (a) That an existing rule is not within the intent of the legislature as expressed by the statute which the rule implements, (b) that the rule has not been adopted in accordance with all applicable provisions of law, or (c) that an agency is using a policy or interpretive statement in place of a rule, the agency affected shall be notified of such finding and the reasons therefor. Within thirty days of the receipt of the rules review committee's notice, the agency shall file notice of a hearing on the rules review committee's finding with the code reviser and mail notice to all persons who have made timely request of the agency for advance notice of its rule-making proceedings as provided in RCW 34.05.320. The agency's notice shall include the rules review committee's findings and reasons therefor, and shall be published in the Washington state register in accordance with the provisions of chapter 34.08 RCW.

(4) The agency shall consider fully all written and oral submissions regarding (a) whether the rule in question is within the intent of the legislature as expressed by the statute which the rule implements, (b) whether the rule was adopted in accordance with all applicable provisions of law, ((or)) and (c) whether the agency is using a policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, in place of a rule.

**Sec. 2.** RCW 34.05.640 and 1996 c 318 s 5 are each amended to read as follows:

(1) Within seven days of an agency hearing held after notification of the agency by the rules review committee pursuant to RCW 34.05.620 or 34.05.630, the affected agency shall notify the committee of its intended action on a proposed or existing rule to which the committee objected or on a committee finding of the agency's failure to adopt rules.

(2) If the rules review committee finds by a majority vote of its members: (a) That the proposed or existing rule in question will not be modified, amended, withdrawn, or repealed by the agency so as to conform with the intent of the legislature, (b) that an existing rule was not adopted in accordance with all applicable provisions of law, or (c) that the agency will not replace the policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, with a rule, the rules review committee may, within thirty days from notification by the agency of its intended action, file with the code reviser notice of its objections together with a concise statement of the reasons therefor. Such notice and statement shall also be provided to the agency by the rules review committee.

(3)(a) If the rules review committee makes an adverse finding regarding an existing rule under subsection (2)(a) or (b) of this section, the committee may, by a majority vote of its members, recommend suspension of the rule. Within seven days of such vote the committee shall transmit to the appropriate standing committees of the legislature, the governor, the code reviser, and the agency written notice of its objection and recommended suspension and the concise reasons therefor. Within thirty days of receipt of the notice, the governor shall transmit to the committee, the code reviser, and the agency written approval or disapproval of the recommended suspension. If the suspension is approved by the governor, it is effective from the date of that approval and continues until ninety days after the expiration of the next regular legislative session.

(b) If the rules review committee makes an adverse finding regarding a policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, under subsection (2)(c) of this section, the committee may, by a majority vote of its members, advise the governor of its finding.

(4) The code reviser shall publish transmittals from the rules review committee or the governor issued pursuant to subsection (2) or (3) of this section in the Washington state register and shall publish in the next supplement and compilation of the Washington Administrative Code a reference to the committee's objection or recommended suspension and the governor's action on it and to the issue of the Washington state register in which the full text thereof appears.

(5) The reference shall be removed from a rule published in the Washington Administrative Code if a subsequent adjudicatory proceeding determines that the rule is within the intent of the legislature or was adopted in accordance with all applicable laws, whichever was the objection of the rules review committee.

Sec. 3. RCW 34.05.655 and 1996 c 318 s 7 are each amended to read as follows:

(1) Any person may petition the rules review committee for a review of a proposed or existing rule or a proposed or existing policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent. A petition to review a statement, guideline, or document that is of general applicability, or its equivalent, may only be filed for the purpose of requesting the committee to determine whether the statement, guideline, or document that is of general applicability, or its equivalent, is being used as a rule that has not been adopted in accordance with all provisions of law. Within thirty days of the receipt of the petition, the rules review committee shall acknowledge receipt of the petition and describe any initial action taken. If the rules review committee rejects the petition, a written statement of the reasons for rejection shall be included.

(2) A person may petition the rules review committee under subsection (1) of this section requesting review of an existing rule only if the person has petitioned the agency to amend or repeal the rule under RCW 34.05.330(1) and such petition was denied.

(3) A petition for review of a rule under subsection (1) of this section shall:

(a) Identify with specificity the proposed or existing rule to be reviewed;

(b) Identify the specific statute identified by the agency as authorizing the rule, the specific statute which the rule interprets or implements, and, if applicable, the specific statute the department is alleged not to have followed in adopting the rule;

(c) State the reasons why the petitioner believes that the rule is not within the intent of the legislature, or that its adoption was not or is not in accordance with law, and provide documentation to support these statements;

(d) Identify any known judicial action regarding the rule or statutes identified in the petition.

A petition to review an existing rule shall also include a copy of the agency's denial of a petition to amend or repeal the rule issued under RCW 34.05.330(1) and, if available, a copy of the governor's denial issued under RCW 34.05.330(3).

(4) A petition for review of a policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, under subsection (1) of this section shall:

(a) Identify the specific policy or interpretative statement, guideline, or document that is of general applicability, or its equivalent, to be reviewed;

(b) Identify the specific statute which the rule interprets or implements;

(c) State the reasons why the petitioner believes that the policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, meets the definition of a rule under RCW 34.05.010 and should have been adopted according to the procedures of this chapter;

(d) Identify any known judicial action regarding the policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, or statutes identified in the petition.

(5) Within ninety days of receipt of the petition, the rules review committee shall make a final decision on the rule for which the petition for review was not previously rejected.

Passed the Senate February 14, 1998.

Passed the House February 27, 1998.

Approved by the Governor March 11, 1998.

Filed in Office of Secretary of State March 11, 1998.

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**CHAPTER 22**

[Senate Bill 6631]

**DECLARATIONS OF CANDIDACY FOR SCHOOL DIRECTOR CANDIDATES  
IN JOINT DISTRICTS**

AN ACT Relating to candidate declaration filings in districts comprising more than one county; and amending RCW 29.15.030.

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

**Sec. 1.** RCW 29.15.030 and 1990 c 59 s 84 are each amended to read as follows:

Declarations of candidacy shall be filed with the following filing officers:

(1) The secretary of state for declarations of candidacy for state-wide offices, United States senate, and United States house of representatives;

(2) The secretary of state for declarations of candidacy for the state legislature, the court of appeals, and the superior court when voters from a district comprising more than one county vote upon the candidates;

(3) The county auditor for all other offices. For any nonpartisan office, other than judicial offices and school director in joint districts, where voters from a district comprising more than one county vote upon the candidates, a declaration of candidacy shall be filed with the county auditor of the county in which a majority of the registered voters of the district reside. For school directors in joint school districts, the declaration of candidacy shall be filed with the county auditor of the county designated by the state board of education as the county to which the joint school district is considered as belonging under RCW 28A.315.380.

Each official with whom declarations of candidacy are filed under this section, within one business day following the closing of the applicable filing period, shall forward to the public disclosure commission a copy of each declaration of candidacy filed in his office during such filing period or a list containing the name of each candidate who files such a declaration in his office during such filing period together with a precise identification of the position sought by each such candidate and the date on which each such declaration was filed. Such official, within three days following his receipt of any letter withdrawing a person's name as a candidate, shall also forward a copy of such withdrawal letter to the public disclosure commission.

Passed the Senate February 14, 1998.  
 Passed the House February 27, 1998.  
 Approved by the Governor March 11, 1998.  
 Filed in Office of Secretary of State March 11, 1998.

## CHAPTER 23

[Second Substitute House Bill 1065]

### FILING OF INSURANCE-RELATED CORPORATE DOCUMENTS

AN ACT Relating to the filing of corporate documents by insurance companies, health care service contractors, and health maintenance organizations; amending RCW 48.06.060, 48.06.200, and 48.07.070; adding a new section to chapter 23.86 RCW; adding a new section to chapter 23B.01 RCW; adding a new section to chapter 23B.02 RCW; adding new sections to chapter 23B.04 RCW; adding a new section to chapter 23B.10 RCW; adding a new section to chapter 23B.14 RCW; adding a new section to chapter 23B.15 RCW; adding new sections to chapter 24.03 RCW; adding new sections to chapter 24.06 RCW; adding a new section to chapter 48.44 RCW; adding a new section to chapter 48.46 RCW; adding a new section to chapter 43.07 RCW; and adding a new section to chapter 48.02 RCW.

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

**Sec. 1.** RCW 48.06.060 and 1947 c 79 s .06.06 are each amended to read as follows:

Upon the filing of the bond required by RCW 48.06.110 after notice by the commissioner, the commissioner shall:

- (1) File the articles of incorporation of the proposed incorporated insurer or other corporation (~~((with the secretary of state,));~~); and
- (2) Issue to the applicant a solicitation permit.

**Sec. 2.** RCW 48.06.200 and 1981 c 302 s 37 are each amended to read as follows:

(1) This section applies to insurers incorporated in this state, but no insurer heretofore lawfully incorporated in this state is required to reincorporate or change its articles of incorporation by reason of any provisions of this section.

(2) The incorporators shall be individuals who are United States citizens, of whom two-thirds shall be residents of this state. The number of incorporators shall be not less than five if a stock insurer, nor less than ten if a mutual insurer.

(3) The incorporators shall execute articles of incorporation in ~~((tripliate and))~~ duplicate, acknowledge their signatures thereunto before an officer authorized to take acknowledgments of deeds, and file both copies with the commissioner.

(4) After approval of the articles by the commissioner, one copy shall be filed ~~((in the office of the secretary of state, another))~~ in the office of the commissioner(;) and the ~~((third))~~ other copy shall be ~~((retained by))~~ returned to the insurer.

(5) The articles of incorporation shall state:

First: The names and addresses of the incorporators.

Second: The name of the insurer. If a mutual insurer the name shall include the word "mutual."

Third: (a) The objects for which the insurer is formed;

(b) whether it is a stock or mutual insurer, and if a mutual property insurer only, whether it will insure on the cash premium or assessment plan;

(c) the kinds of insurance it will issue, according to the designations made in this code.

Fourth: If a stock insurer, the amount of its capital, the aggregate number of shares, and the par value of each share, which par value shall be not less than ten dollars, except that after the corporation has transacted business as an authorized insurer in the state for five years or more, its articles of incorporation may be amended, at the option of its stockholders, to provide for a par value of not less than one dollar per share. If a mutual insurer, the maximum contingent liability of its policyholders for the payment of its expenses and losses occurring under its policies.

Fifth: The duration of its existence, which may be perpetual.

Sixth: The names and addresses of the directors, not less than five in number, who shall constitute the board of directors of the insurer for the initial term, not less than two nor more than six months, as designated in the articles of incorporation.

Seventh: The name of the city or town of this state in which the insurer's principal place of business is to be located.

Eighth: Other provisions not inconsistent with law as may be deemed proper by the incorporators.

**Sec. 3.** RCW 48.07.070 and 1985 c 364 s 4 are each amended to read as follows:

(1) Unless a vote of a greater proportion of directors or shares is required by its articles of incorporation, amendments to the articles of incorporation of a domestic insurer or a domestic insurance holding corporation shall be made by a majority vote of its board of directors and the vote or written assent of a majority of its voting capital stock, or two-thirds of the members (if a mutual insurer) voting at a valid meeting of members.

(2) The president and secretary of the insurer shall, under the corporate seal, certify the amendment in ~~((triplicate))~~ duplicate; and file ~~((it))~~ both copies in the office~~((s))~~ of the ~~((secretary of state, the commissioner, and the insurer;))~~ commissioner as required under this code for original articles of incorporation. Thereupon, subject to the requirements of RCW 48.08.010 relative to increase of capital stock of a stock insurer, the amendment shall become effective.

**NEW SECTION.** **Sec. 4.** A new section is added to chapter 23.86 RCW to read as follows:

For those corporations that have a certificate of authority, are applying for, or intend to apply for a certificate of authority from the insurance commissioner as an insurance company under chapter 48.05 RCW, whenever under this chapter corporate documents are required to be filed with the secretary of state, the documents shall be filed with the insurance commissioner rather than the secretary of state.



**NEW SECTION.** Sec. 5. A new section is added to chapter 23B.01 RCW to read as follows:

For those corporations that have a certificate of authority, are applying for, or intend to apply for a certificate of authority from the insurance commissioner as an insurance company under chapter 48.05 RCW, whenever under this chapter corporate documents are required to be filed with the secretary of state, the documents shall be filed with the insurance commissioner rather than the secretary of state.

**NEW SECTION.** Sec. 6. A new section is added to chapter 23B.02 RCW to read as follows:

For those corporations that have a certificate of authority, are applying for, or intend to apply for a certificate of authority from the insurance commissioner as an insurance company under chapter 48.05 RCW, whenever under this chapter corporate documents are required to be filed with the secretary of state, the documents shall be filed with the insurance commissioner rather than the secretary of state.

**NEW SECTION.** Sec. 7. A new section is added to chapter 23B.04 RCW to read as follows:

For those corporations that have a certificate of authority, are applying for, or intend to apply for a certificate of authority from the insurance commissioner as an insurance company under chapter 48.05 RCW, whenever under this chapter corporate documents are required to be filed with the secretary of state, the documents shall be filed with the insurance commissioner rather than the secretary of state.

**NEW SECTION.** Sec. 8. A new section is added to chapter 23B.04 RCW to read as follows:

For those corporations that intend to apply for a certificate of authority from the insurance commissioner as an insurance company under chapter 48.05 RCW, whenever under this chapter a corporation may register or reserve a corporate name, the registration or reservation shall be filed with the insurance commissioner rather than the secretary of state. The secretary of state and insurance commissioner shall cooperate with each other in registering or reserving a corporate name so that there is no duplication of the name.

**NEW SECTION.** Sec. 9. A new section is added to chapter 23B.10 RCW to read as follows:

For those corporations that have a certificate of authority, are applying for, or intend to apply for a certificate of authority from the insurance commissioner as an insurance company under chapter 48.05 RCW, whenever under this chapter corporate documents are required to be filed with the secretary of state, the documents shall be filed with the insurance commissioner rather than the secretary of state.

**NEW SECTION.** Sec. 10. A new section is added to chapter 23B.14 RCW to read as follows:

For those corporations that have a certificate of authority, are applying for, or intend to apply for a certificate of authority from the insurance commissioner as an insurance company under chapter 48.05 RCW, whenever under this chapter corporate documents are required to be filed with the secretary of state, the documents shall be filed with the insurance commissioner rather than the secretary of state.

**NEW SECTION.** Sec. 11. A new section is added to chapter 23B.15 RCW to read as follows:

For those corporations that have a certificate of authority, are applying for, or intend to apply for a certificate of authority from the insurance commissioner as an insurance company under chapter 48.05 RCW, whenever under this chapter corporate documents are required to be filed with the secretary of state, the documents shall be filed with the insurance commissioner rather than the secretary of state.

**NEW SECTION.** Sec. 12. A new section is added to chapter 24.03 RCW to read as follows:

For those corporations that have a certificate of authority, are applying for, or intend to apply for a certificate of authority from the insurance commissioner as an insurance company under chapter 48.05 RCW, whenever under this chapter corporate documents are required to be filed with the secretary of state, the documents shall be filed with the insurance commissioner rather than the secretary of state.

**NEW SECTION.** Sec. 13. A new section is added to chapter 24.03 RCW to read as follows:

For those corporations that intend to apply for a certificate of authority from the insurance commissioner as an insurance company under chapter 48.05 RCW, whenever under this chapter a corporation may register or reserve a corporate name, the registration or reservation shall be filed with the insurance commissioner rather than the secretary of state. The secretary of state and insurance commissioner shall cooperate with each other in registering or reserving a corporate name so that there is no duplication of the name.

**NEW SECTION.** Sec. 14. A new section is added to chapter 24.06 RCW to read as follows:

For those corporations that have a certificate of authority, are applying for, or intend to apply for a certificate of authority from the insurance commissioner as an insurance company under chapter 48.05 RCW, whenever under this chapter corporate documents are required to be filed with the secretary of state, the documents shall be filed with the insurance commissioner rather than the secretary of state.

**NEW SECTION.** Sec. 15. A new section is added to chapter 24.06 RCW to read as follows:

For those corporations that intend to apply for a certificate of authority from the insurance commissioner as an insurance company under chapter 48.05 RCW, whenever under this chapter a corporation may register or reserve a corporate name, the registration or reservation shall be filed with the insurance commissioner rather than the secretary of state. The secretary of state and insurance commissioner shall cooperate with each other in registering or reserving a corporate name so that there is no duplication of the name.

**NEW SECTION.** Sec. 16. A new section is added to chapter 48.44 RCW to read as follows:

Health care service contractors and limited health care service contractors shall send a copy specifically for the office of the insurance commissioner to the secretary of state of any corporate document required to be filed in the office of the secretary of state, including articles of incorporation and bylaws, and any amendments thereto. The copy specifically provided for the office of the insurance commissioner shall be in addition to the copies required by the secretary of state and shall clearly indicate on the copy that it is for delivery to the office of the insurance commissioner.

**NEW SECTION.** Sec. 17. A new section is added to chapter 48.46 RCW to read as follows:

Health maintenance organizations shall send a copy specifically for the office of the insurance commissioner to the secretary of state of any corporate document required to be filed in the office of the secretary of state, including articles of incorporation and bylaws, and any amendments thereto. The copy specifically provided for the office of the insurance commissioner shall be in addition to the copies required by the secretary of state and shall clearly indicate on the copy that it is for delivery to the office of the insurance commissioner.

**NEW SECTION.** Sec. 18. A new section is added to chapter 43.07 RCW to read as follows:

The secretary of state shall deliver to the office of the insurance commissioner copies of corporate documents filed with the secretary of state by health care service contractors and health maintenance organizations that have been provided for the insurance commissioner under sections 16 and 17 of this act.

**NEW SECTION.** Sec. 19. A new section is added to chapter 48.02 RCW to read as follows:

Whenever any documents are filed with the insurance commissioner which affect a corporate or company name, the insurance commissioner shall immediately notify the secretary of state of the filing. If any other action is taken by the insurance commissioner which affects a corporate or company name, the insurance commissioner shall immediately notify the secretary of state of the action. The insurance commissioner shall cooperate with the secretary of state to ascertain that there is no duplication of corporate or company names.

Passed the House January 26, 1998.  
Passed the Senate March 2, 1998.  
Approved by the Governor March 12, 1998.  
Filed in Office of Secretary of State March 12, 1998.

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**CHAPTER 24**

[Substitute House Bill 1077]

**PROOF OF IDENTITY**

AN ACT Relating to identification; adding a new chapter to Title 19 RCW; and prescribing penalties.

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

**NEW SECTION. Sec. 1.** (1) Any person or entity, other than those listed in subsection (2) of this section, issuing an identification card that purports to identify the holder as a resident of this or any other state and that contains at least a name, photograph, and date of birth, must label the card "not official proof of identification" in fluorescent yellow ink, on the face of the card, and in not less than fourteen-point font. The background color of the card must be a color other than the color used for official Washington state driver's licenses and identicards.

(2) This section does not apply to the following persons and entities:

- (a) Department of licensing;
- (b) Any federal, state, or local government agency;
- (c) The Washington state liquor control board;
- (d) Private employers issuing cards identifying employees;
- (e) Banks and credit card companies issuing credit, debit, or bank cards containing a person's photograph; and
- (f) Retail or wholesale stores issuing membership cards containing a person's photograph.

(3) Failure to comply with this section is a class 1 civil infraction.

**NEW SECTION. Sec. 2.** Section 1 of this act constitutes a new chapter in Title 19 RCW.

Passed the House January 12, 1998.  
Passed the Senate February 23, 1998.  
Approved by the Governor March 12, 1998.  
Filed in Office of Secretary of State March 12, 1998.

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**CHAPTER 25**

[House Bill 2144]

**INSURANCE COMMISSIONER—DESIGNATED DEPOSITARY**

AN ACT Relating to the insurance commissioner's designated depositary; and amending RCW 48.16.070.

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

**Sec. 1.** RCW 48.16.070 and 1985 c 264 s 6 are each amended to read as follows:

The commissioner may designate any solvent trust company or other solvent financial institution having trust powers (~~((domiciled in this state,))~~) as the commissioner's depository to receive and hold any deposit of securities. Any deposit so held shall be at the expense of the insurer. Any solvent financial institution (~~((domiciled in this state))~~) having trust powers, the deposits of which are insured by the Federal Deposit Insurance Corporation (~~((or the Federal Savings and Loan Insurance Corporation))~~), may be designated as the commissioner's depository to receive and hold any deposit of funds. All funds deposited shall be fully insured by the Federal Deposit Insurance Corporation (~~((or the Federal Savings and Loan Insurance Corporation))~~). For purposes of this section, "solvent financial institution" means any national or state-chartered commercial bank or trust company, savings bank, or savings association, or branch or branches thereof, having trust powers located in this state and lawfully engaged in business.

Passed the House February 2, 1998.

Passed the Senate March 2, 1998.

Approved by the Governor March 12, 1998.

Filed in Office of Secretary of State March 12, 1998.

## CHAPTER 26

[Substitute House Bill 2295]

### COURT OF APPEALS JUDICIAL POSITIONS—STAGGERING OF TERMS

AN ACT Relating to court of appeals judicial positions; and amending RCW 2.06.076.

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

**Sec. 1.** RCW 2.06.076 and 1993 c 420 s 2 are each amended to read as follows:

(1) Any judicial position created by section 1, chapter 420, Laws of 1993 shall be effective only if that position is specifically funded and is referenced by division and district in an omnibus appropriations act.

(2)(a) The full term of office for the judicial positions authorized pursuant to chapter 420, Laws of 1993 shall be six years.

(b) The authorized judicial positions shall be filled at the general election in the November immediately preceding the beginning of the full term except as provided in (d) and (e) of this subsection.

(c) The six-year terms shall be staggered as ~~((provided in (c)(i) through (iii) of this subsection.~~

~~—(i)) follows:~~ In the first division, the initial full terms of six years for the two positions in district 1 shall begin the second Monday in January following the general election held in ~~((November 1993. If the effective dates for the judicial positions are later than the deadline to include them in the November 1993 election, the initial full terms shall begin the second Monday in January following~~

~~the general election held in~~) November ~~((1999))~~ 2000. ~~((The initial full term of six years for the position in district 3 shall begin on the second Monday in January following the general election held in November 1996:))~~ If the effective date for the judicial ~~((position is))~~ positions are later than the deadline to include it in the November ~~((1996))~~ 2000 election, the initial full term shall begin the second Monday in January following the general election held in November ~~((2002))~~ 2006.

~~((ii) In the second division, the initial full term of six years for the position in district 2 shall begin the second Monday in January following the general election held in November 1994. If the effective date of the judicial position is later than the deadline to include it in the November 1994 election the initial full term shall begin the second Monday in January following the general election held in November 2000. The initial full term for the position in district 3 shall begin the second Monday in January following the general election held in November 1998. If the effective date of the judicial position is later than the deadline to include it in the November 1998 election, the initial full term shall begin the second Monday in January following the general election held in November 2004.~~

~~((iii) In the third division, the initial full term of six years for the position in district 3 shall begin the second Monday in January following the general election held in November 1994. If the effective date of the judicial position is later than the deadline to include it in the November 1994 election, the initial full term will begin the second Monday in January following the general election held in November 2000:))~~

(d) Upon becoming effective pursuant to subsection (1) of this section, the governor shall appoint judges to the additional judicial positions authorized in section 1, chapter 420, Laws of 1993. The appointed judges shall hold office until the second Monday in January following the general election following the effective date of the position. The appointed judges and other judicial candidates are entitled to run for the judicial position at the general election following appointment.

(e) The initial election for these positions shall be held in November following the effective date of the position. If the initial election of a newly authorized position is not held on a date which corresponds to the beginning of a full term as specified in (c)~~((i) through (iii))~~ of this subsection, the election shall be for a partial term.

Passed the House February 6, 1998.

Passed the Senate March 2, 1998.

Approved by the Governor March 12, 1998.

Filed in Office of Secretary of State March 12, 1998.

## CHAPTER 27

[Engrossed Substitute House Bill 2297]

## RECORDING OF DOCUMENTS BY COUNTY AUDITORS

AN ACT Relating to recording documents; and amending RCW 65.04.045, 65.04.047, and 65.04.015.

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

**See. 1.** RCW 65.04.045 and 1996 c 143 s 2 are each amended to read as follows:

(1) When any instrument is presented to a county auditor or recording officer for recording, the first page of the instrument shall contain:

(a) A top margin of at least three inches and a one-inch margin on the bottom and sides, except that an instrument may be recorded if a minor portion of a notary seal, incidental writing, or minor portion of a signature extends beyond the margins;

(b) The top left-hand side of the page shall contain the name and address to whom the instrument will be returned;

(c) The title or titles, or type or types, of the instrument to be recorded indicating the kind or kinds of documents or transactions contained therein. The auditor or recording officer shall only be required to index the title or titles captioned on the document;

(d) Reference numbers of documents assigned or released with reference to the document page number where additional references can be found, if applicable;

(e) The names of the grantor(s) and grantee(s), as defined under RCW 65.04.015, with reference to the document page number where additional names are located, if applicable;

(f) An abbreviated legal description of the property, including lot, block, plat, or section, township, and range, and reference to the document page number where the full legal description is included, if applicable;

(g) The assessor's property tax parcel or account number.

(2) All pages of the document shall be on sheets of paper of a weight and color capable of producing a legible image that are not larger than fourteen inches long and eight and one-half inches wide with text printed or written in eight point type or larger. Further, all instruments presented for recording must have a one-inch margin on the top, bottom, and sides for all pages except page one, be prepared in ink color capable of being imaged, and have all seals legible and capable of being imaged, and no attachments may be affixed to the pages.

The information provided on the instrument must be in substantially the following form:

This Space Provided for Recorder's Use

When Recorded Return to:

.....

Document Title(s)

Grantor(s)

Grantee(s)

Legal Description

Assessor's Property Tax Parcel or Account Number

Reference Numbers of Documents Assigned or Released

Sec. 2. RCW 65.04.047 and 1996 c 143 s 3 are each amended to read as follows:

If an instrument presented for recording does not contain the information required by RCW 65.04.045(1) (~~((a) through (e))~~), the person preparing the instrument for recording shall prepare a cover sheet that contains the required information. The cover sheet shall be attached to the instrument and shall be recorded as a part of the instrument. An additional page fee as determined under RCW 36.18.010 shall be collected for recording of the cover sheet. Any errors in the cover sheet shall not affect the transactions contained in the instrument itself. The cover sheet need not be separately signed or acknowledged. The cover sheet information shall be used to generate the auditor's grantor/grantee index, however, the names and legal description in the instrument itself will determine the legal chain of title. The cover sheet shall be substantially the following form:

WASHINGTON STATE COUNTY AUDITOR/RECORDER'S  
INDEXING FORM

Return Address

Please print or type information

Document Title(s) (or transactions contained therein):

- 1.
- 2.
- 3.
- 4.

Grantor(s) (Last name first, then first name and initials)

- 1.
- 2.



3.

4.

5.  Additional names on page \_\_ of document.**Grantee(s)** (Last name first, then first name and initials)

1.

2.

3.

4.

5.  Additional names on page \_\_ of document.**Legal Description** (abbreviated: i.e., lot, block, plat or section, township, range) Additional legal description is on page \_\_ of document.**Assessor's Property Tax Parcel or Account Number:****Reference Number(s) of Documents assigned or released:** Additional references on page \_\_ of document.

The Auditor or Recording Officer will rely on the information provided on this form. The staff will not read the document to verify the accuracy of or the completeness of the indexing information provided herein.

**Sec. 3.** RCW 65.04.015 and 1996 c 229 s 1 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Recording officer" means the county auditor, or in charter counties the county official charged with the responsibility for recording instruments in the county records.

(2) "File," "filed," or "filing" means the act of delivering or transmitting electronically an instrument to the auditor or recording officer for recording into the official public records.

(3) "Record," "recorded," or "recording" means the process, such as electronic, mechanical, optical, magnetic, or microfilm storage used by the auditor or recording officer after filing to incorporate the instrument into the public records.

(4) "Record location number" means a unique number that identifies the storage location (book or volume and page, reel and frame, instrument number, auditor or recording officer file number, receiving number, electronic retrieval code, or other specific place) of each instrument in the public records accessible in the same recording office where the instrument containing the reference to the location is found.

(5) "Grantor/grantee" for recording purposes means the names of the parties involved in the transaction used to create the recording index. There will always

be at least one grantor and one grantee for any document. In some cases, the grantor and the grantee will be the same individual(s), or one of the parties may be the public.

Passed the House February 6, 1998.

Passed the Senate March 2, 1998.

Approved by the Governor March 12, 1998.

Filed in Office of Secretary of State March 12, 1998.

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## CHAPTER 28

[Substitute House Bill 2321]

### CONSUMER LOANS—COLLECTION OF THIRD-PARTY FEES

AN ACT Relating to authorizing the collection of third-party fees in connection with making consumer loans; and amending RCW 31.04.105.

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

**Sec. 1.** RCW 31.04.105 and 1994 c 92 s 167 are each amended to read as follows:

Every licensee may:

(1) Lend money at a rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed;

(2) In connection with the making of a loan, charge the borrower a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan;

(3) Agree with the borrower for the payment of fees (~~for title insurance, appraisals, recording, reconveyance, and releasing~~) to third parties other than the licensee who provide goods or services to the licensee in connection with the preparation of the borrower's loan, including, but not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, and escrow companies, when such fees are actually paid by the licensee to a third party for such services or purposes and may include such fees in the amount of the loan. However, no charge may be collected unless a loan is made, except for reasonable fees properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender;

(4) Charge and collect a penalty of ten cents or less on each dollar of any installment payment delinquent ten days or more;

(5) Collect from the debtor reasonable attorneys' fees, actual expenses, and costs incurred in connection with the collection of a delinquent debt, a repossession, or a foreclosure when a debt is referred for collection to an attorney who is not a salaried employee of the licensee;

(6) Make open-end loans as provided in this chapter;

(7) Charge and collect a fee for dishonored checks in an amount approved by the director; and

(8) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, and covering the involuntary unemployment of the borrower.

Passed the House January 26, 1998.

Passed the Senate March 2, 1998.

Approved by the Governor March 12, 1998.

Filed in Office of Secretary of State March 12, 1998.

## CHAPTER 29

[Substitute House Bill 2364]

### HEALTH PROFESSIONS—ESTABLISHMENT OF ADMINISTRATIVE PROCEDURES AND REQUIREMENTS BY SECRETARY OF HEALTH

AN ACT Relating to extending the time for the secretary of health to establish administrative procedures and requirements for health professions; and amending RCW 43.70.280.

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

**Sec. I.** RCW 43.70.280 and 1996 c 191 s 2 are each amended to read as follows:

(1) The secretary, in consultation with health profession boards and commissions, shall establish by rule the administrative procedures, administrative requirements, and fees for initial issue, renewal, and reissue of a credential for professions under RCW 18.130.040, including procedures and requirements for late renewals and uniform application of late renewal penalties. Failure to renew invalidates the credential and all privileges granted by the credential. Administrative procedures and administrative requirements do not include establishing, monitoring, and enforcing qualifications for licensure, scope or standards of practice, continuing competency mechanisms, and discipline when such authority is authorized in statute to a health profession board or commission. For the purposes of this section, "in consultation with" means providing an opportunity for meaningful participation in development of rules consistent with processes set forth in RCW 34.05.310.

(2) Notwithstanding any provision of law to the contrary which provides for a licensing period for any type of license subject to this chapter including those under RCW 18.130.040, the secretary of health may, from time to time, extend or otherwise modify the duration of any licensing, certification, or registration period, whether an initial or renewal period, if the secretary determines that it would result in a more economical or efficient operation of state government and that the public health, safety, or welfare would not be substantially adversely affected thereby. However, no license, certification, or registration may be issued or approved for a period in excess of four years, without renewal. Such extension, reduction, or other modification of a licensing, certification, or registration period shall be by rule or regulation of the department of health adopted in accordance

with the provisions of chapter 34.05 RCW. Such rules and regulations may provide a method for imposing and collecting such additional proportional fee as may be required for the extended or modified period.

(3) Unless extended by the legislature, effective ~~((July 1, 1998))~~ March 1, 1999, the authority of the secretary to establish administrative procedures and administrative requirements for initial issue, renewal, and reissue of a credential, including procedures and requirements for late renewals and uniform application of late renewal penalties, shall cease to apply to those health professions otherwise regulated by a board or commission with statutory rule-making authority. If not extended by the legislature, such authority shall transfer to the respective board or commission. Rules adopted by the secretary under this section shall remain in effect after ~~((July 1, 1993))~~ March 1, 1999, until modified or repealed in accordance with the provisions of chapter 34.05 RCW.

Passed the House February 10, 1998.

Passed the Senate March 2, 1998.

Approved by the Governor March 12, 1998.

Filed in Office of Secretary of State March 12, 1998.

## CHAPTER 30

[House Bill 2575]

### PUBLIC DISCLOSURE COMMISSION—CLARIFICATION OF MEMBER RESTRICTIONS

AN ACT Relating to clarification of restrictions on public disclosure commission members' activities; and amending RCW 42.17.350.

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

**Sec. 1.** RCW 42.17.350 and 1984 c 287 s 74 are each amended to read as follows:

(1) There is hereby established a "public disclosure commission" which shall be composed of five members who shall be appointed by the governor, with the consent of the senate. All appointees shall be persons of the highest integrity and qualifications. No more than three members shall have an identification with the same political party. ~~((The original members shall be appointed within sixty days after January 1, 1973.))~~

(2) The term of each member shall be five years ~~((except that the original five members shall serve initial terms of one, two, three, four, and five years, respectively, as designated by the governor))~~. No member is eligible for appointment to more than one full term. Any member may be removed by the governor, but only upon grounds of neglect of duty or misconduct in office.

(3) During his or her tenure, a member of the commission~~((during his tenure, shall (1)))~~ is prohibited from engaging in any of the following activities, either within or outside the state of Washington:

(a) ~~((hold))~~ Holding or ~~((campaign))~~ campaigning for elective office;

~~((2))~~ be) (b) Serving as an officer of any political party or political committee;

~~((3) permit)~~ (c) Permitting his or her name to be used~~(, or make)~~ in support of or in opposition to a candidate or proposition:

~~(d) Soliciting or making contributions~~~~(;) to a candidate or~~ in support of or in opposition to any candidate or proposition;

~~((4) participate)~~ (e) Participating in any way in any election campaign; or

~~((5) lobby or employ or assist)~~ (f) Lobbying, employing, or assisting a lobbyist~~((- PROVIDED))~~, except that a member or the staff of the commission may lobby to the limited extent permitted by RCW 42.17.190 on matters directly affecting this chapter. ~~((No member shall be eligible for appointment to more than one full term.))~~

(4) A vacancy on the commission shall be filled within thirty days of the vacancy by the governor, with the consent of the senate, and the appointee shall serve for the remaining term of his or her predecessor. A vacancy shall not impair the powers of the remaining members to exercise all of the powers of the commission.

(5) Three members of the commission shall constitute a quorum. The commission shall elect its own ~~((chairman))~~ chair and adopt its own rules of procedure in the manner provided in chapter 34.05 RCW. ~~((Any member of the commission may be removed by the governor, but only upon grounds of neglect of duty or misconduct in office.))~~

(6) Members shall be compensated in accordance with RCW 43.03.250 and in addition shall be reimbursed for travel expenses incurred while engaged in the business of the commission as provided in RCW 43.03.050 and 43.03.060. The compensation provided pursuant to this section shall not be considered salary for purposes of the provisions of any retirement system created pursuant to the general laws of this state.

Passed the House February 11, 1998.

Passed the Senate March 2, 1998.

Approved by the Governor March 12, 1998.

Filed in Office of Secretary of State March 12, 1998.

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## CHAPTER 31

[House Bill 2717]

### STORM WATER AND SEWER SERVICES—USE OF PUBLIC MONEYS FOR OWNER IMPROVEMENTS

AN ACT Relating to the implementation of House Joint Resolution No. 4209 approved by the voters in 1997; adding a new section to chapter 35.67 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. **Sec. 1.** The legislature finds that the voters approved an amendment to Article VIII, section 10 of the state Constitution in 1997. The legislature finds that this amendment to the state Constitution will allow necessary improvements to be made to storm water and sewer services so that less pollution

is discharged into the waters of the state, less treatment will be needed, and capacity for existing treatment systems will be saved. It is the intent of the legislature to enact legislation that grants specific authority to units of local government that provide storm water and sewer services to operate programs that are consistent with the authority granted in House Joint Resolution No. 4209.

**NEW SECTION.** **Sec. 2.** A new section is added to chapter 35.67 RCW to read as follows:

Any city, code city, town, county, special purpose district, municipal corporation, or quasi-municipal corporation that is engaged in the sale or distribution of storm water or sewer services may use public moneys or credit derived from operating revenues from the sale of storm water or sewer services to assist the owners of structures or equipment in financing the acquisition and installation of materials and equipment, for compensation or otherwise, for the conservation or more efficient use of storm water or sewer services in such structures or equipment. Except for the necessary support of the poor and infirm, an appropriate charge-back shall be made for the extension of public moneys or credit. The charge-back shall be a lien against the structure benefited or a security interest in the equipment benefited.

**NEW SECTION.** **Sec. 3.** Section 2 of this act takes effect July 1, 1998.

Passed the House February 10, 1998.

Passed the Senate February 27, 1998.

Approved by the Governor March 12, 1998.

Filed in Office of Secretary of State March 12, 1998.

## CHAPTER 32

[Engrossed House Bill 2920]

### COUNSELORS—CONTINUING COMPETENCE REQUIREMENTS

AN ACT Relating to counselors; and amending RCW 18.19.170.

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

**Sec. 1.** RCW 18.19.170 and 1996 c 191 s 6 are each amended to read as follows:

A certificate issued under this chapter shall be renewed as provided in RCW 43.70.250 and 43.70.280. The secretary ((may)) shall establish continuing competence requirements by rule in consultation with the mental health quality assurance council. Certified counselors are responsible for obtaining thirty-six clock hours of continuing education during the two-year reporting period immediately preceding renewal of certification, including subjects in professional ethics and law.

Passed the House February 12, 1998.

Passed the Senate March 2, 1998.

Approved by the Governor March 12, 1998.

Filed in Office of Secretary of State March 12, 1998.

### CHAPTER 33

[Substitute House Bill 2931]

#### ELECTRONIC SIGNATURES

AN ACT Relating to electronic signatures; amending RCW 19.34.100; and adding a new section to chapter 19.34 RCW.

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

**Sec. 1.** RCW 19.34.100 and 1997 c 27 s 3 are each amended to read as follows:

(1) To obtain or retain a license, a certification authority must:

(a) Be the subscriber of a certificate published in a recognized repository, which may include any repository maintained by the secretary;

(b) Knowingly employ as operative personnel only persons who have not been convicted within the past ((fifteen)) seven years of a felony ((or)) and have ((ever {never})) never been convicted of a crime involving fraud, false statement, or deception. The secretary may provide by rule for the manner in which criminal background information is provided as part of the licensing process. For purposes of this provision, a certification authority knowingly employs such a person if the certification authority knew of a conviction, or should have known based upon the background information required by rule of the secretary;

(c) Employ as operative personnel only persons who have demonstrated knowledge and proficiency in following the requirements of this chapter;

(d) File with the secretary a suitable guaranty, unless the certification authority is a city or county that is self-insured or the department of information services;

(e) Use a trustworthy system, including a secure means for limiting access to its private key;

(f) ~~((Present proof to the secretary of having working capital reasonably sufficient, according to rules adopted by the secretary, to enable the applicant to conduct business as a certification authority;~~

~~—(g))~~ Maintain an office in this state or have established a registered agent for service of process in this state; and

~~((h))~~ (g) Comply with all further licensing requirements established by rule by the secretary.

(2) The secretary must issue a license to a certification authority that:

(a) Is qualified under subsection (1) of this section;

(b) Applies in writing to the secretary for a license; and

(c) Pays a filing fee adopted by rule by the secretary.

(3) The secretary may by rule classify licenses according to specified limitations, such as a maximum number of outstanding certificates, cumulative maximum of recommended reliance limits in certificates issued by the certification authority, or issuance only within a single firm or organization, and the secretary may issue licenses restricted according to the limits of each classification. The liability limits of RCW 19.34.280 do not apply to a certificate issued by a certification authority that exceeds the restrictions of the certification authority's license.

(4) The secretary may revoke or suspend a certification authority's license, in accordance with the administrative procedure act, chapter 34.05 RCW, for failure to comply with this chapter or for failure to remain qualified under subsection (1) of this section. The secretary may order the summary suspension of a license pending proceedings for revocation or other action, which must be promptly instituted and determined, if the secretary includes within a written order a finding that the certification authority has either:

(a) Utilized its license in the commission of a violation of a state or federal criminal statute or of chapter 19.86 RCW; or

(b) Engaged in conduct giving rise to a serious risk of loss to public or private parties if the license is not immediately suspended.

(5) The secretary may recognize by rule the licensing or authorization of certification authorities by other governmental entities, provided that those licensing or authorization requirements are substantially similar to those of this state. If licensing by another government is so recognized:

(a) RCW 19.34.300 through 19.34.350 apply to certificates issued by the certification authorities licensed or authorized by that government in the same manner as it applies to licensed certification authorities of this state; and

(b) The liability limits of RCW 19.34.280 apply to the certification authorities licensed or authorized by that government in the same manner as they apply to licensed certification authorities of this state.

(6) Unless the parties provide otherwise by contract between themselves, the licensing requirements in this section do not affect the effectiveness, enforceability, or validity of any digital signature, except that RCW 19.34.300 through 19.34.350 do not apply to a certificate, and associated digital signature, issued by an unlicensed certification authority.

(7) A certification authority that has not obtained a license is not subject to the provisions of this chapter, except as specifically provided.

**NEW SECTION.** Sec. 2. A new section is added to chapter 19.34 RCW to read as follows:

(1) The following information, when in the possession of the secretary, the department of information services, or the state auditor for purposes of this chapter, shall not be made available for public disclosure, inspection, or copying, unless the request is made under an order of a court of competent jurisdiction based upon an express written finding that the need for the information outweighs



any reason for maintaining the privacy and confidentiality of the information or records:

(a) A trade secret, as defined by RCW 19.108.010; and

(b) Information regarding design, security, or programming of a computer system used for purposes of licensing or operating a certification authority or repository under this chapter.

(2) The state auditor, or an authorized agent, must be given access to all information referred to in subsection (1) of this section for the purpose of conducting audits under this chapter or under other law, but shall not make that information available for public inspection or copying except as provided in subsection (1) of this section.

Passed the House February 10, 1998.

Passed the Senate March 2, 1998.

Approved by the Governor March 12, 1998.

Filed in Office of Secretary of State March 12, 1998.

## CHAPTER 34

[Substitute House Bill 3056]

### ON-SITE SEPTIC SYSTEMS—DEVELOPMENT OF CERTIFICATION AND LICENSING REQUIREMENTS

AN ACT Relating to implementing the recommendations of the on-site wastewater certification work group; adding a new section to chapter 70.05 RCW; and creating new sections.

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

**NEW SECTION. Sec. 1.** (1) The 1997 legislature directed the department of health to convene a work group for the purpose of making recommendations to the legislature for the development of a certification program for occupations related to on-site septic systems, including those who pump, install, design, perform maintenance, inspect, or regulate on-site septic systems. The work group was convened and studied issues relating to certification of people employed in these occupations, bonding levels, and other standards related to these occupations. In addition, the work group examined the application of a risk analysis pertaining to the installation and maintenance of different types of septic systems in different parts of the state. A written report containing the work group's findings and recommendations was submitted to the legislature as directed.

(2) The legislature recognizes that the recommendations of the work group must be phased-in over a time period in order to develop the necessary scope of work requirements, knowledge requirements, public protection requirements, and other criteria for the upgrading of these occupations. It is the intent of the legislature to start implementing the work group's recommendations by focusing first on the occupations that are considered to be the highest priority, and to address the other occupational recommendations in subsequent sessions.

**NEW SECTION.** Sec. 2. (1) The department of licensing and the department of health shall jointly convene an advisory committee for the purpose of developing legislation that will establish licensing requirements for the designers of on-site septic systems, and a proposed certification program for inspectors of on-site septic systems that tests the same knowledge and competency required for licensed designers of on-site septic systems. The departments shall develop the legislation consistent with the findings and recommendations contained in the written report developed by the on-site wastewater certification work group. The proposed legislation shall be submitted to the senate agriculture and environment committee and the house of representatives agriculture and ecology committee by December 1, 1998.

(2) The department of licensing and the department of health shall report on the time frames and feasibility for developing proposed legislation that implements the other on-site wastewater certification work group's recommendations by December 1, 1998.

**NEW SECTION.** Sec. 3. A new section is added to chapter 70.05 RCW to read as follows:

(1) The department of health, in consultation and cooperation with local environmental health officers, shall develop a one-day course to train local environmental health officers, health officers, and environmental health specialists and technicians to address the application of the waiver authority granted under RCW 70.05.072 as well as other existing statutory or regulatory flexibility for siting on-site sewage systems.

(2) The training course shall include the following topics:

(a) The statutory authority to grant waivers from the state on-site sewage system rules;

(b) The regulatory framework for the application of on-site sewage treatment and disposal technologies, with an emphasis on the differences between rules, standards, and guidance. The course shall include instruction on interpreting the intent of a rule rather than the strict reading of the language of a rule, and also discuss the liability assumed by a unit of local government when local rules, policies, or practices deviate from the state administrative code;

(c) The application of site evaluation and assessment methods to match the particular site and development plans with the on-site sewage treatment and disposal technology suitable to protect public health to at least the level provided by state rule; and

(d) Instruction in the concept and application of mitigation waivers.

(3) The training course shall be made available to all local health departments and districts in various locations in the state without fee. Updated guidance documents and materials shall be provided to all participants, including examples of the types of waivers and processes that other jurisdictions in the region have granted and used. The first training conducted under this section shall take place by June 30, 1999.

Passed the House February 10, 1998.  
 Passed the Senate February 27, 1998.  
 Approved by the Governor March 12, 1998.  
 Filed in Office of Secretary of State March 12, 1998.

## CHAPTER 35

[House Bill 2698]

### LODGING TAX STATUTES—RESOLUTION OF STATUTORY CONFLICTS

AN ACT Relating to resolving conflicts in lodging tax statutes enacted in 1997; amending RCW 67.28.181 and 67.28.1817; adding a new section to chapter 67.28 RCW; creating a new section; and declaring an emergency.

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

**Sec. 1.** RCW 67.28.181 and 1997 c 452 s 3 are each amended to read as follows:

(1) The legislative body of any municipality may impose an excise tax on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW. The rate of tax shall not exceed the lesser of ~~((four))~~ two percent or a rate that, when combined with all other taxes imposed upon sales of lodging within the municipality under this chapter and chapters 36.100, 67.40, 82.08, and 82.14 RCW, equals twelve percent. A tax under this chapter shall not be imposed in increments smaller than tenths of a percent.

(2) Notwithstanding subsection (1) of this section:

(a) If a municipality ~~((imposed))~~ was authorized to impose taxes under this chapter ~~((and))~~ or RCW 67.40.100 or both with a total rate exceeding four percent ~~((on January 1, 1998, the rate of tax imposed under this chapter by the municipality shall not exceed the total rate imposed by the municipality under this chapter and RCW 67.40.100 on January 1, 1998))~~ before July 27, 1997, such total authorization shall continue through January 1, 1999, and thereafter the municipality may impose a tax under this section at a rate not exceeding the rate actually imposed by the municipality on January 1, 1999.

(b) If a city or town, other than a municipality ~~((described in))~~ imposing a tax under (a) of this subsection, is located in a county that imposed taxes under this chapter with a total rate of four percent or more on January 1, 1997, the ~~((rate of tax imposed under this chapter by the city or town shall not exceed two percent))~~ city or town may not impose a tax under this section.

(c) If a city has a population of four hundred thousand or more and is located in a county with a population of one million or more, the rate of tax imposed under this chapter by the city shall not exceed the lesser of four percent or a rate that, when combined with all other taxes imposed upon sales of lodging in the municipality under this chapter and chapters 36.100, 67.40, 82.08, and 82.14 RCW, equals fifteen and two-tenths percent.

(d) If a municipality was authorized to impose taxes under this chapter or RCW 67.40.100, or both, at a rate equal to six percent before January 1, 1998, the

municipality may impose a tax under this section at a rate not exceeding the rate actually imposed by the municipality on January 1, 1998.

(3) ~~((Except as provided in RCW 67.28.180;))~~ Any county ordinance or resolution adopted under this section shall contain a provision allowing a credit against the county tax for the full amount of any city or town tax imposed under this section upon the same taxable event.

~~((4) Tax imposed under this section on a sale of lodging shall be credited against the amount of sales tax due to the state under chapter 82.08 RCW on the same sale of lodging, but the total credit for taxes imposed by all municipalities on a sale of lodging shall not exceed the amount that would be imposed under a two percent tax under this section. This subsection does not apply to taxes which are credited against the state sales tax under RCW 67.28.180.))~~

NEW SECTION. Sec. 2. A new section is added to chapter 67.28 RCW to read as follows:

Tax collected under RCW 67.28.180 on a sale of lodging shall be credited against the amount of sales tax due to the state under chapter 82.08 RCW on the same sale of lodging.

Sec. 3. RCW 67.28.1817 and 1997 c 452 s 5 are each amended to read as follows:

(1) ~~Before ((imposing a tax under RCW 67.28.181))~~ proposing imposition of a new tax under this chapter, an increase in the rate of a tax imposed under this chapter, repeal of an exemption from a tax imposed under this chapter, or a change in the use of revenue received under this chapter, a municipality with a population of five thousand or more shall establish a lodging tax advisory committee under this section. A lodging tax advisory committee shall consist of at least five members, appointed by the legislative body of the municipality, unless the municipality has a charter providing for a different appointment authority. The committee membership shall include: (a) At least two members who are representatives of businesses required to collect tax under this chapter; and (b) at least two members who are persons involved in activities authorized to be funded by revenue received under this chapter. Persons who are eligible for appointment under (a) of this subsection are not eligible for appointment under (b) of this subsection. Persons who are eligible for appointment under (b) of this subsection are not eligible for appointment under (a) of this subsection. Organizations representing businesses required to collect tax under this chapter, organizations involved in activities authorized to be funded by revenue received under this chapter, and local agencies involved in tourism promotion may submit recommendations for membership on the committee. The number of members who are representatives of businesses required to collect tax under this chapter shall equal the number of members who are involved in activities authorized to be funded by revenue received under this chapter. One member shall be an elected official of the municipality who shall serve as chair of the committee. An advisory committee for a county may include one nonvoting member who is an

elected official of a city or town in the county. An advisory committee for a city or town may include one nonvoting member who is an elected official of the county in which the city or town is located. The appointing authority shall review the membership of the advisory committee annually and make changes as appropriate.

(2) Any municipality that proposes imposition of a tax under this chapter, an increase in the rate of a tax imposed under this chapter, repeal of an exemption from a tax imposed under this chapter, or a change in the use of revenue received under this chapter shall submit the proposal to the lodging tax advisory committee for review and comment. The submission shall occur at least forty-five days before final action on or passage of the proposal by the municipality. The advisory committee shall submit comments on the proposal in a timely manner through generally applicable public comment procedures. The comments shall include an analysis of the extent to which the proposal will accommodate activities for tourists or increase tourism, and the extent to which the proposal will affect the long-term stability of the fund created under RCW 67.28.1815. Failure of the advisory committee to submit comments before final action on or passage of the proposal shall not prevent the municipality from acting on the proposal. A municipality is not required to submit an amended proposal to an advisory committee under this section.

**NEW SECTION. Sec. 4.** If a municipality was authorized to impose taxes under chapter 67.28 RCW or RCW 67.40.100 or both with a total rate exceeding four percent before July 27, 1997, any taxes imposed and collected by the municipality on or after July 27, 1997, are validated by this act to the extent the taxes were imposed at rates that would be permitted under chapter 67.28 RCW as amended by this act. All actions taken in connection with the collection and administration of taxes validated under this section, including crediting the taxes against the amount of sales taxes due to the state under chapter 82.08 RCW, are also validated by this act to the extent the actions taken would be permitted under chapter 67.28 RCW as amended by this act.

**NEW SECTION. Sec. 5.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the House January 20, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 12, 1998.

Filed in Office of Secretary of State March 12, 1998.

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## CHAPTER 36

[Substitute Senate Bill 6474]  
FERTILIZER REGULATION

AN ACT Relating to fertilizer regulation; amending RCW 15.54.270, 15.54.275, 15.54.325, 15.54.330, 15.54.340, 15.54.380, 15.54.414, 15.54.420, 15.54.436, 15.54.470, 15.54.474, 15.54.480,

15.54.800, 70.95.030, 70.95.240, and 43.21B.110; adding new sections to chapter 15.54 RCW; adding a new section to chapter 70.95 RCW; creating new sections; repealing RCW 15.54.335 and 70.95.830; and prescribing penalties.

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

**NEW SECTION. Sec. 1.** (1) The legislature intends to strengthen the state's fertilizer adulteration laws to protect human health and the environment by:

- (a) Ensuring that all fertilizers meet standards for allowable metals;
- (b) Allowing fertilizer purchasers and users to know about the contents of fertilizer products; and
- (c) Clarifying the department of ecology's oversight authority over waste-derived fertilizers.

(2) The legislature intends to provide better information to the public on fertilizers, soils, and potential health effects by authorizing additional studies on plant uptake of metals and levels of dioxins in soils and products.

**Sec. 2.** RCW 15.54.270 and 1997 c 427 s 1 are each amended to read as follows:

Terms used in this chapter have the meaning given to them in this chapter unless the context clearly indicates otherwise.

(1) "Brand" means a term, design, or trademark used in connection with the distribution and sale of one or more grades of commercial fertilizers.

(2) "Bulk fertilizer" means commercial fertilizer distributed in a ~~((nonpackage))~~ nonpackaged form such as, but not limited to, tote bags, tote tanks, bins, tanks, trailers, spreader trucks, and railcars.

(3) "Calcium carbonate equivalent" means the acid-neutralizing capacity of an agricultural liming material expressed as a weight percentage of calcium carbonate.

(4) "Commercial fertilizer" means a substance containing one or more recognized plant nutrients and that is used for its plant nutrient content or that is designated for use or claimed to have value in promoting plant growth, and shall include limes, gypsum, and manipulated animal and vegetable manures ~~((and a material approved under RCW 70.95.830))~~. It does not include unmanipulated animal and vegetable manures, organic waste-derived material, and other products exempted by the department by rule.

(5) "Composting" means the controlled aerobic degradation of organic waste materials. Natural decay of organic waste under uncontrolled conditions is not composting.

(6) "Customer-formula fertilizer" means a mixture of commercial fertilizer or materials of which each batch is mixed according to the specifications of the final purchaser.

~~((6))~~ (7) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

~~((7))~~ (8) "Director" means the director of the department of agriculture.

~~((8))~~ (9) "Distribute" means to import, consign, manufacture, produce, compound, mix, or blend commercial fertilizer, or to offer for sale, sell, barter, exchange, or otherwise supply commercial fertilizer in this state.

~~((9))~~ (10) "Distributor" means a person who distributes.

~~((10))~~ (11) "Fertilizer material" means a commercial fertilizer that either:

(a) Contains important quantities of no more than one of the primary plant nutrients: Nitrogen, phosphate, and potash;

(b) Has eighty-five percent or more of its plant nutrient content present in the form of a single chemical compound; or

(c) Is derived from a plant or animal residue or byproduct or natural material deposit that has been processed in such a way that its content of plant nutrients has not been materially changed except by purification and concentration.

(12) "Grade" means the percentage of total nitrogen, available phosphoric acid, and soluble potash stated in whole numbers in the same terms, order, and percentages as in the "guaranteed analysis," unless otherwise allowed by a rule adopted by the department. Specialty fertilizers may be guaranteed in fractional units of less than one percent of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or potash. Fertilizer materials, bone meal, manures, and similar materials may be guaranteed in fractional units.

~~((11))~~ (13) "Guaranteed analysis."

(a) Until the director prescribes an alternative form of "guaranteed analysis" by rule the term "guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed in the following order and form:

Total nitrogen (N)	.....	percent
Available phosphoric acid (P <sub>2</sub> O <sub>5</sub> )	.....	percent
Soluble potash (K <sub>2</sub> O)	.....	percent

The percentage shall be stated in whole numbers unless otherwise allowed by the department by rule.

The "guaranteed analysis" may also include elemental guarantees for phosphorus (P) and potassium (K).

(b) For acidulated mineral phosphatic material and basic slag, bone, tankage, and other organic phosphatic materials, the total phosphoric acid or degree of fineness may also be guaranteed.

(c) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium shall be as allowed or required by rule of the department. The guarantees for such other nutrients shall be expressed in the form of the element.

(d) The guaranteed analysis for limes shall include the percentage of calcium or magnesium expressed as their carbonate; the calcium carbonate equivalent as determined by methods prescribed by the association of official analytical chemists; and the minimum percentage of material that will pass respectively a one hundred mesh, sixty mesh, and ten mesh sieve. The mesh size declaration may also include the percentage of material that will pass additional mesh sizes.

(e) In commercial fertilizer, the principal constituent of which is calcium sulfate (gypsum), the percentage of calcium sulfate ( $C_4S_4O_{16} \cdot 2H_2O$ ) shall be given along with the percentage of total sulfur.

~~((f)) The guaranteed analysis for a material approved under RCW 70.95.830 and to be used as a soil amendment shall include the name and percentage of each soil-amending ingredient and the total percentage of all other ingredients.~~

~~—((12)))~~ (14) "Imported fertilizer" means any fertilizer distributed into Washington from any other state, province, or country.

(15) "Label" means the display of all written, printed, or graphic matter, upon the immediate container, or a statement accompanying a fertilizer.

~~((13)))~~ (16) "Labeling" includes all written, printed, or graphic matter, upon or accompanying a commercial fertilizer, or advertisement, brochures, posters, television, and radio announcements used in promoting the sale of such fertilizer.

~~((14)))~~ (17) "Licensee" means the person who receives a license to distribute a commercial fertilizer under the provisions of this chapter.

~~((15)))~~ (18) "Lime" means a substance or a mixture of substances, the principal constituent of which is calcium or magnesium carbonate, hydroxide, or oxide, singly or combined.

~~((16)))~~ (19) "Manipulation" means processed or treated in any manner, including drying to a moisture content less than thirty percent.

~~((17)))~~ (20) "Manufacture" means to compound, produce, granulate, mix, blend, repackage, or otherwise alter the composition of fertilizer materials.

~~((18)))~~ (21) "Micronutrients" are: Boron; chlorine; cobalt; copper; iron; manganese; molybdenum; sodium; and zinc.

(22) "Micronutrient fertilizer" means a produced or imported commercial fertilizer that contains commercially valuable concentrations of micronutrients but does not contain commercially valuable concentrations of nitrogen, phosphoric acid, available phosphorus, potash, calcium, magnesium, or sulfur.

(23) "Official sample" means a sample of commercial fertilizer taken by the department and designated as "official" by the department.

~~((19)))~~ (24) "Organic waste-derived material" means grass clippings, leaves, weeds, bark, plantings, prunings, and other vegetative wastes, uncontaminated wood waste from logging and milling operations, food wastes, food processing wastes, and materials derived from these wastes through composting. "Organic waste-derived material" does not include products that include biosolids.

(25) "Packaged fertilizer" means commercial fertilizers, either agricultural or specialty, distributed in nonbulk form.

~~((20)))~~ (26) "Person" means an individual, firm, brokerage, partnership, corporation, company, society, or association.

~~((21)))~~ (27) "Percent" or "percentage" means the percentage by weight.

~~((22)))~~ (28) "Produce" means to compound or fabricate a commercial fertilizer through a physical or chemical process, or through mining. "Produce" does not include mixing, blending, or repackaging commercial fertilizer products.



~~(29)~~ "Registrant" means the person who registers commercial fertilizer under the provisions of this chapter.

~~((23))~~ (30) "Specialty fertilizer" means a commercial fertilizer distributed primarily for nonfarm use, such as, but not limited to, use on home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries.

~~((24))~~ (31) "Ton" means the net weight of two thousand pounds avoirdupois.

~~((25))~~ (32) "Total nutrients" means the sum of the percentages of total nitrogen, available phosphoric acid, and soluble potash as guaranteed and as determined by analysis.

(33) "Washington application rate" is calculated by using an averaging period of up to four consecutive years that incorporates agronomic rates that are representative of soil, crop rotation, and climatic conditions in Washington state.

(34) "Waste-derived fertilizer" means a commercial fertilizer that is derived in whole or in part from solid waste as defined in chapter 70.95 or 70.105 RCW, or rules adopted thereunder, but does not include fertilizers derived from biosolids or biosolids products regulated under chapter 70.95J RCW or wastewaters regulated under chapter 90.48 RCW.

**Sec. 3.** RCW 15.54.275 and 1993 c 183 s 2 are each amended to read as follows:

(1) No person may distribute a ~~((commercial))~~ bulk fertilizer in this state ~~((except packaged fertilizers,))~~ until a license to distribute has been obtained by that person. An annual license is required for each out-of-state or in-state location that distributes ~~((nonpackaged-commercial))~~ bulk fertilizer in Washington state. An application for each location shall be filed on forms provided by the master license system and shall be accompanied by an annual fee of twenty-five dollars per location. The license shall expire on the master license expiration date.

(2) An application for license shall include the following:

(a) The name and address of licensee.

(b) Any other information required by the department by rule.

(3) The name and address shown on the license shall be shown on all labels, pertinent invoices, and storage facilities for fertilizer distributed by the licensee in this state.

(4) If an application for license renewal provided for in this section is not filed prior to ~~((the))~~ the master license expiration date, a delinquency fee of twenty-five dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued. The assessment of this delinquency fee shall not prevent the department from taking any other action as provided for in this chapter. The penalty shall not apply if the applicant furnishes an affidavit that he or she has not distributed this commercial fertilizer subsequent to the expiration of his or her prior license.

Sec. 4. RCW 15.54.325 and 1993 c 183 s 3 are each amended to read as follows:

(1) No person may distribute in this state a ~~((packaged))~~ commercial fertilizer until it ~~((is))~~ has been registered with the department by the ~~((distributor whose name appears on the label))~~ producer, importer, or packager of that product. A bulk fertilizer does not require registration if all commercial fertilizer products contained in the final product are registered.

~~(2) An application for ((each packaged fertilizer product)) registration shall be made on a form furnished by the department and shall be accompanied by ((an initial)) a fee of twenty-five dollars for ((the first)) each product ((and ten dollars for each additional product)). Labels for each product shall accompany the application. All companies planning to mix ((packaged)) customer-formula fertilizers shall include the statement "customer-formula grade mixes" under the column headed "product name" on the product registration application form. All customer-formula fertilizers sold under one brand name shall be considered one product. ((Upon the approval of an application by the department, a copy of the registration shall be furnished to the applicant. All registrations expire on June 30th of each year except that for the period beginning January 1, 1994, the registration shall expire on June 30, 1995.~~

~~((2))~~ (3) An application for registration shall include the following:

- (a) The product name;
- (b) The brand and grade;
- (c) The guaranteed analysis;
- (d) Name ~~((and)),~~ address, and phone number of the registrant;
- (e) Labels for each product being registered;
- (f) Identification of those products that are (i) waste-derived fertilizers, (ii) micronutrient fertilizers, or (iii) fertilizer materials containing phosphate;

(g) Identification of the fertilizer components in the commercial fertilizer product and verification that all the components are registered. If any of the components are not registered, then the application must include the concentration of each metal in each fertilizer component, for which standards are established under RCW 15.54.800;

(h) Waste-derived fertilizers and micronutrient fertilizers shall include at a minimum, information to ensure the product complies with chapter 70.105 RCW and the resource conservation and recovery act, 42 U.S.C. Sec. 6901 et seq.; and

(i) Any other information required by the department by rule.

~~((3))~~ (4) If an application for renewal of the product registration provided for in this section is not filed prior to July 1st of any one year, a penalty of ten dollars per product shall be assessed and added to the original fee and shall be paid by the applicant before the renewal registration shall be issued. The assessment of this late collection fee shall not prevent the department from taking any other action as provided for in this chapter. The penalty shall not apply if the applicant furnishes an affidavit that he or she has not distributed this commercial fertilizer subsequent to the expiration of his or her prior registration.

Sec. 5. RCW 15.54.330 and 1993 c 183 s 4 are each amended to read as follows:

(1) The department shall examine the ((packaged)) commercial fertilizer product registration application form and labels for conformance with the requirements of this chapter. If the application and appropriate labels are in proper form and contain the required information, the particular ((packaged)) commercial fertilizer products shall be registered by the department and a certificate of registration shall be issued to the applicant. All registrations expire June 30th of each year.

(2) In reviewing the ((packaged)) commercial fertilizer product registration application, the department may consider experimental data, manufacturers' evaluations, data from agricultural experiment stations, product review evaluations, or other authoritative sources to substantiate labeling claims. The data shall be from statistically designed and analyzed trials representative of the soil, crops, and climatic conditions found in the northwestern area of the United States.

(3) In determining whether approval of a labeling statement or guarantee of an ingredient is appropriate, the department may require the submission of a written statement describing the methodology of laboratory analysis utilized, the source of the ingredient material, and any reference material relied upon to support the label statement or guarantee of ingredient.

(4) Before registering a waste-derived fertilizer or micronutrient fertilizer, the department shall obtain written approval from the department of ecology as provided in RCW 15.54.800. Once a waste-derived fertilizer or micronutrient fertilizer has been approved by the department of ecology, its subsequent use in another product during that registration cycle shall not require department of ecology review. This subsection shall apply to new and renewal registration applications for periods beginning July 1, 1999, and thereafter.

Sec. 6. RCW 15.54.340 and 1993 c 183 s 5 are each amended to read as follows:

(1) Any ((packaged)) commercial fertilizer distributed in this state ((in containers)) shall have placed on or affixed to the package a label setting forth in clearly legible and conspicuous form the following information:

(a) The net weight;

(b) The product name, brand, and grade. The grade is not required if no primary nutrients are claimed;

(c) The guaranteed analysis;

(d) The name and address of the registrant or licensee. The name and address of the manufacturer, if different from the registrant or licensee, may also be stated; ((and))

(e) Any information required under WAC 296-62-054;

(f) At a minimum the following labeling statement: "This product has been registered with the Washington State Department of Agriculture. When applied

as directed, this fertilizer meets the Washington standards for arsenic, cadmium, cobalt, mercury, molybdenum, lead, nickel, selenium, and zinc. You have the right to receive specific information about Washington standards from the distributor of this product.";

(g) After July 1, 1999, the label must also state: "Information received by the Washington State Department of Agriculture regarding the components in this product is available on the internet at <http://www.wa.gov/agr/>."; and

(h) Other information as required by the department by rule.

(2) If a commercial fertilizer is distributed in bulk, a written or printed statement of the information required by subsection (1) (~~above~~) of this section shall accompany delivery and be supplied to the purchaser at the time of delivery.

(3) Each delivery of a customer-formula fertilizer shall be subject to containing those ingredients specified by the purchaser, which ingredients shall be shown on the statement or invoice with the amount contained therein, and a record of all invoices of customer-formula grade mixes shall be kept by the registrant or licensee for a period of twelve months and shall be available to the department upon request: PROVIDED, That each such delivery shall be accompanied by either a statement, invoice, a delivery slip, or a label if bagged, containing the following information: The net weight; the brand; the guaranteed analysis which may be stated to the nearest tenth of a percent or to the next lower whole number; the name and address of the registrant or licensee, or manufacturer, or both; and the name and address of the purchaser.

(4) Any person who distributes a commercial fertilizer in this state shall make available to the purchaser on request, a copy of standards for metals established in RCW 15.54.800.

Sec. 7. RCW 15.54.380 and 1993 c 183 s 9 are each amended to read as follows:

(1) If the analysis shall show that any commercial fertilizer falls short of the guaranteed analysis in any one plant nutrient or in total nutrients, penalty shall be assessed in favor of the department in accordance with the following provisions:

(a) A penalty of three times the commercial value of the deficiency, if such deficiency in any one plant nutrient is more than two percent under guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed up to and including ten percent; a penalty of three times the commercial value of the deficiency, if such deficiency in any one plant nutrient is more than three percent under guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed from ten and one-tenth percent to twenty percent; a penalty of three times the commercial value of the deficiency, if such deficiency in any one plant nutrient is more than four percent under guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed twenty and one-tenth percent and above.

(h) A penalty of three times the commercial value of the total nutrient deficiency shall be assessed when such deficiency is more than two percent under the calculated total nutrient guarantee.

(c) When a commercial fertilizer is subject to penalty under both (a) and (b) ~~((above))~~ of this subsection, only the larger penalty shall be assessed.

(2) All penalties assessed under this section on any one commercial fertilizer, represented by the sample analyzed, shall be paid to the department within three months after the date of notice from the department to the registrant or licensee. The department shall deposit the amount of the penalty into ~~((the fertilizer, agricultural mineral and lime account))~~ an account with the agricultural local fund.

(3) Nothing contained in this section shall prevent any person from appealing to a court of competent jurisdiction for a judgment as to the justification of such penalties imposed under subsections (1) and (2) ~~((above))~~ of this section.

(4) The civil penalties payable in subsections (1) and (2) ~~((above))~~ of this section shall in no manner be construed as limiting the consumer's right to bring a civil action in damage against the registrant or licensee paying said civil penalties.

**Sec. 8.** RCW 15.54.414 and 1993 c 183 s 10 are each amended to read as follows:

No person may distribute an adulterated commercial fertilizer. A commercial fertilizer is adulterated:

(1) If it contains any deleterious or harmful ~~((ingredient))~~ substance in sufficient amount to render it injurious to beneficial plant life when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use which may be necessary to protect plant life are not shown upon the label;

(2) If its composition falls below or differs from that which it is purported to possess by its labeling; ~~((or))~~

(3) If it contains unwanted viable seed; or

(4) If the concentration of any nonnutritive constituent in a representative sample of commercial fertilizer exceeds the maximum concentration stated on the registration application or on the label.

**Sec. 9.** RCW 15.54.420 and 1993 c 183 s 11 are each amended to read as follows:

It shall be unlawful for any person to:

(1) Distribute an adulterated or misbranded commercial fertilizer;

(2) Fail, refuse, or neglect to place upon or attach to each package of distributed commercial fertilizer a label containing all of the information required by this chapter;

(3) Fail, refuse, or neglect to deliver to a purchaser of bulk commercial fertilizer a statement containing the information required by this chapter;

(4) Distribute a ~~((packaged))~~ commercial fertilizer product which has not been registered with the department;

(5) Distribute bulk fertilizer without holding a license to do so;

~~(6) ((Distribute unregistered packaged fertilizer. It is the responsibility of the person who manufactures or subsequently packages that fertilizer to register it prior to distribution in this state;~~

~~—(7)) Refuse or neglect to keep and maintain records, or to make reports when and as required; or~~

~~((8)) (7) Make false or fraudulent applications, records, invoices, or reports.~~

**Sec. 10.** RCW 15.54.436 and 1993 c 183 s 12 are each amended to read as follows:

The department may cancel the license to distribute commercial fertilizer or registration of any ~~((packaged))~~ commercial fertilizer product or refuse to license a distributor or register any ~~((packaged))~~ commercial fertilizer product as provided in this chapter due to:

- (1) An incomplete or insufficient license or registration application;
- (2) The misbranding or adulteration of a commercial fertilizer; or
- (3) A violation of this chapter or rules adopted under this chapter.

If the department cancels or refuses to renew an existing license or registration due to the misbranding or adulteration of a commercial fertilizer or due to a violation of this chapter or a rule adopted hereunder, the licensee/registrant or applicant may request a hearing as provided for in chapter 34.05 RCW.

**Sec. 11.** RCW 15.54.470 and 1993 c 183 s 13 are each amended to read as follows:

(1) Any person who violates any provision of this chapter shall be guilty of a misdemeanor, and the fines collected shall be disposed of as provided under RCW 15.54.480.

(2) Nothing in this chapter shall be considered as requiring the department to report for prosecution or to cancel the registration of a ~~((packaged))~~ commercial fertilizer product or to stop the sale of fertilizers for violations of this chapter, when violations are of a minor character, and/or when the department believes that the public interest will be served and protected by a suitable notice of the violation in writing.

(3) It shall be the duty of each prosecuting attorney to whom any violation of this chapter is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation of this chapter for such prosecution, an opportunity shall be given the distributor to present his or her view in writing or orally to the department.

(4) The department is hereby authorized to apply for, and the court authorized to grant, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule adopted under this chapter, notwithstanding the existence of any other remedy at law. Any such injunction shall be issued without bond.

**Sec. 12.** RCW 15.54.474 and 1987 c 45 s 10 are each amended to read as follows:

Every person who fails to comply with this chapter, or any rule adopted under it, may be subjected to a civil penalty, as determined by the director, in an amount of not more than ~~((one))~~ seven thousand five hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense. Every person, who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this chapter and may be subject to the penalty provided for in this section.

**Sec. 13.** RCW 15.54.480 and 1988 c 254 s 3 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, all moneys collected under the provisions of this chapter shall be paid to the director and deposited in an account within the agricultural local fund. Such deposits shall be used only in the administration and enforcement of this chapter. ~~((Any residual balance remaining in the fertilizer, agricultural mineral and lime fund on June 9, 1988, shall be transferred to that account within the agricultural local fund.))~~

(2) Moneys collected under RCW 15.54.474 shall be deposited in the general fund.

**NEW SECTION.** **Sec. 14.** The department of agriculture shall conduct a comprehensive study of plant uptake of metals. The department shall work cooperatively with the department of ecology and the department of health to interpret the study results regarding potential impacts to public and environmental health. A report of the results of the study shall be submitted to appropriate committees of the legislature by December 31, 2000.

**Sec. 15.** RCW 15.54.800 and 1997 c 427 s 3 are each amended to read as follows:

(1) The director shall administer and enforce the provisions of this chapter and any rules adopted under this chapter. All authority and requirements provided for in chapter 34.05 RCW apply to this chapter in the adoption of rules.

(2) The director may adopt appropriate rules for carrying out the purpose and provisions of this chapter, including but not limited to rules providing for:

(a) Definitions of terms;

(b) Determining standards for labeling and registration of commercial fertilizers;

(c) The collection and examination of commercial fertilizers;

(d) Recordkeeping by registrants and licensees;

(e) Regulation of the use and disposal of commercial fertilizers for the protection of ground water and surface water; and

(f) The safe handling, transportation, storage, display, and distribution of commercial fertilizers.

(3)(a) Standards are established for allowable levels of nonnutritive substances in commercial fertilizers. These standards are Canadian figures for

agricultural and agri-food Canadian maximum acceptable cumulative metal additions to soil established under Trade Memorandum T-4-93 dated August 1996. Washington application rates shall be used to ensure that the maximum acceptable cumulative metal additions to soil are not exceeded.

(b) If federal or other risk-based standards are adopted or scientific peer-reviewed studies show that the standards adopted in this section are not at the appropriate level to protect human health or the environment, the department, in consultation with the departments of ecology and health, may initiate a rule making to amend these standards.

**NEW SECTION. Sec. 16.** A new section is added to chapter 15.54 RCW to read as follows:

(1) After receipt from the department of the completed application required by RCW 15.54.325, the department of ecology shall evaluate whether the use of the proposed waste-derived fertilizer or the micronutrient fertilizer as defined in RCW 15.54.270 is consistent with the following:

- (a) Chapter 70.95 RCW, the solid waste management act;
- (b) Chapter 70.105 RCW, the hazardous waste management act; and
- (c) 42 U.S.C. Sec. 6901 et seq., the resource conservation and recovery act.

(2) The department of ecology shall apply the standards adopted in RCW 15.54.800. If more stringent standards apply under chapter 173-303 WAC for the same constituents, the department of ecology must use the more stringent standards.

(3) Within sixty days of receiving the completed application, the department of ecology shall advise the department as to whether the application complies with the requirements of subsections (1) and (2) of this section. In making a determination, the department of ecology shall consult with the department of health and the department of labor and industries.

(4) A party aggrieved by a decision of the department of ecology to issue a written approval under this section or to deny the issuance of such an approval may appeal the decision to the pollution control hearings board within thirty days of the decision. Review of such a decision shall be conducted in accordance with chapter 43.21B RCW. Any subsequent appeal of a decision of the hearings board shall be obtained in accordance with RCW 43.21B.180.

**Sec. 17.** RCW 70.95.030 and 1997 c 213 s I are each amended to read as follows:

As used in this chapter, unless the context indicates otherwise:

- (1) "City" means every incorporated city and town.
- (2) "Commission" means the utilities and transportation commission.
- (3) "Committee" means the state solid waste advisory committee.

(4) "Composted material" means organic solid waste that has been subjected to controlled aerobic degradation at a solid waste facility in compliance with the requirements of this chapter. Natural decay of organic solid waste under uncontrolled conditions does not result in composted material.



~~(5)~~ (5) "Department" means the department of ecology.

~~((5))~~ (6) "Director" means the director of the department of ecology.

~~((6))~~ (7) "Disposal site" means the location where any final treatment, utilization, processing, or deposit of solid waste occurs.

~~((7))~~ (8) "Energy recovery" means a process operating under federal and state environmental laws and regulations for converting solid waste into usable energy and for reducing the volume of solid waste.

~~((8))~~ (9) "Functional standards" means criteria for solid waste handling expressed in terms of expected performance or solid waste handling functions.

~~((9))~~ (10) "Incineration" means a process of reducing the volume of solid waste operating under federal and state environmental laws and regulations by use of an enclosed device using controlled flame combustion.

~~((10))~~ (11) "Jurisdictional health department" means city, county, city-county, or district public health department.

~~((11))~~ (12) "Landfill" means a disposal facility or part of a facility at which solid waste is placed in or on land and which is not a land treatment facility.

~~((12))~~ (13) "Local government" means a city, town, or county.

~~((13))~~ (14) "Modify" means to substantially change the design or operational plans including, but not limited to, removal of a design element previously set forth in a permit application or the addition of a disposal or processing activity that is not approved in the permit.

~~((14))~~ (15) "Multiple family residence" means any structure housing two or more dwelling units.

~~((15))~~ (16) "Person" means individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

~~((16))~~ (17) "Recyclable materials" means those solid wastes that are separated for recycling or reuse, such as papers, metals, and glass, that are identified as recyclable material pursuant to a local comprehensive solid waste plan. Prior to the adoption of the local comprehensive solid waste plan, adopted pursuant to RCW 70.95.110(2), local governments may identify recyclable materials by ordinance from July 23, 1989.

~~((17))~~ (18) "Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration.

~~((18))~~ (19) "Residence" means the regular dwelling place of an individual or individuals.

~~((19))~~ (20) "Sewage sludge" means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials, generated from a wastewater treatment system, that does not meet the requirements of chapter 70.95J RCW.

~~((20))~~ (21) "Soil amendment" means any substance that is intended to improve the physical characteristics of the soil, except composted material, commercial fertilizers, agricultural liming agents, unmanipulated animal manures,

unmanipulated vegetable manures, food wastes, food processing wastes, and materials exempted by rule of the department, such as biosolids as defined in chapter 70.95J RCW and wastewater as regulated in chapter 90.48 RCW.

~~((22))~~ (22) "Solid waste" or "wastes" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.

~~((21))~~ (23) "Solid waste handling" means the management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from solid wastes or the conversion of the energy in solid wastes to more useful forms or combinations thereof.

~~((22))~~ (24) "Source separation" means the separation of different kinds of solid waste at the place where the waste originates.

~~((23))~~ (25) "Vehicle" includes every device physically capable of being moved upon a public or private highway, road, street, or watercourse and in, upon, or by which any person or property is or may be transported or drawn upon a public or private highway, road, street, or watercourse, except devices moved by human or animal power or used exclusively upon stationary rails or tracks.

~~((24))~~ (26) "Waste-derived soil amendment" means any soil amendment as defined in this chapter that is derived from solid waste as defined in RCW 70.95.030, but does not include biosolids or biosolids products regulated under chapter 70.95J RCW or wastewaters regulated under chapter 90.48 RCW.

(27) "Waste reduction" means reducing the amount or toxicity of waste generated or reusing materials.

**NEW SECTION.** Sec. 18. A new section is added to chapter 70.95 RCW to read as follows:

(1) Waste-derived soil amendments that meet the standards and criteria in this section may apply for exemption from solid waste permitting as required under RCW 70.95.170. The application shall be submitted to the department in a format determined by the department or an equivalent format. The application shall include:

(a) Analytical data showing that the waste-derived soil amendments meet standards established under RCW 15.54.800; and

(b) Other information deemed appropriate by the department to protect human health and the environment.

(2) After receipt of an application, the department shall review it to determine whether the application is complete, and forward a copy of the complete application to all interested jurisdictional health departments for review and comment. Within forty-five days, the jurisdictional health departments shall forward their comments and any other information they deem relevant to the department, which shall then give final approval or disapproval of the application. Every complete application shall be approved or disapproved by the department within ninety days after receipt.

(3) The department, after providing opportunity for comments from the jurisdictional health departments, may at any time revoke an exemption granted under this section if the quality or use of the waste-derived soil amendment changes or the management, storage, or end use of the waste-derived soil amendment constitutes a threat to human health or the environment.

(4) Any aggrieved party may appeal the determination by the department in subsection (2) or (3) of this section to the pollution control hearings board.

**Sec. 19.** RCW 70.95.240 and 1997 c 427 s 4 are each amended to read as follows:

(1) After the adoption of regulations or ordinances by any county, city, or jurisdictional board of health providing for the issuance of permits as provided in RCW 70.95.160, it shall be unlawful for any person to dump or deposit or permit the dumping or depositing of any solid waste onto or under the surface of the ground or into the waters of this state except at a solid waste disposal site for which there is a valid permit. This section ~~((shall))~~ does not:

(a) Prohibit a person from dumping or depositing solid waste resulting from his or her own activities onto or under the surface of ground owned or leased by him or her when such action does not violate statutes or ordinances, or create a nuisance; ~~((or))~~

(b) ~~((Apply to a person using a material or materials on the land as commercial fertilizer if (i) the department of ecology has issued written approval for the use of the material or materials as commercial fertilizer as provided in RCW 70.95.830, (ii) the registration of the material or materials as a packaged commercial fertilizer has not been canceled under RCW 15.54.335, and (iii) the distribution of the material or materials as a commercial fertilizer has not been prohibited by the department of agriculture under RCW 15.54.335))~~ Apply to a person using a waste-derived soil amendment that has been approved by the department under section 18 of this act; or

(c) Apply to the application of commercial fertilizer that has been registered with the department of agriculture as provided in RCW 15.54.325, and that is applied in accordance with the standards established in RCW 15.54.800(3).

(2)(a) It is a class 3 civil infraction as defined in RCW 7.80.120 for a person to litter in an amount less than or equal to one cubic foot.

(b) It is a class 1 civil infraction as defined in RCW 7.80.120 for a person to litter in an amount greater than one cubic foot. Unless suspended or modified by a court, the person shall also pay a litter cleanup fee of twenty-five dollars per cubic foot of litter. The court may, in addition to or in lieu of part or all of the cleanup fee, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property.

**NEW SECTION.** Sec. 20. The department of ecology, in conjunction with the departments of agriculture and health, shall undertake a study of whether dioxins occur in fertilizers, soil amendments, and soils and if so, at what levels.

The department of ecology shall seek additional financial and technical assistance from appropriate federal agencies, the fertilizer industry, and other appropriate sources in conducting this study. The department of ecology shall report its findings to the legislature in November 1998.

**NEW SECTION. Sec. 21.** A new section is added to chapter 15.54 RCW to read as follows:

(1) The department shall expand its fertilizer data base to include additional information required for registration under RCW 15.54.325 and 15.54.330.

(2) Except for confidential information under RCW 15.54.362 regarding fertilizer tonnages distributed in the state, information in the fertilizer data base shall be made available to the public upon request.

(3) The department, and the department of ecology in consultation with the department of health, shall biennially prepare a report to the legislature presenting information on levels of nonnutritive substances in fertilizers. Results from agency testing of products that were sampled shall also be displayed. The first such report will be provided to the legislature by December 1, 1999.

(4) After July 1, 1999, the department shall post on the internet the information contained in applications for fertilizer registration.

**Sec. 22.** RCW 43.21B.110 and 1993 c 387 s 22 are each amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, (~~the administrator of the office of marine safety;~~) and the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, or local health departments:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and 90.56.330.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070, 90.14.130, and 90.48.120.

(c) The issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, or the modification of the conditions or the terms of a waste disposal permit.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under section 16 of this act, and decisions of the department regarding waste-derived soil amendments under section 18 of this act.

(g) Any other decision by the department (~~(, the administrator of the office of marine safety,)~~) or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Proceedings by the department relating to general adjudications of water rights pursuant to chapter 90.03 or 90.44 RCW.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

**NEW SECTION. Sec. 23.** The following acts or parts of acts are each repealed:

(1) RCW 15.54.335 and 1997 c 427 s 2; and

(2) RCW 70.95.830 and 1997 c 427 s 5.

**NEW SECTION. Sec. 24.** This act may be known and cited as the fertilizer regulation act.

**NEW SECTION. Sec. 25.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.

Passed the Senate March 9, 1998.

Passed the House March 4, 1998.

Approved by the Governor March 18, 1998.

Filed in Office of Secretary of State March 18, 1998.

## CHAPTER 37

[Second Substitute Senate Bill 6168]

### HOUSING FOR TEMPORARY WORKERS

AN ACT Relating to developing and funding housing for temporary workers; amending RCW 43.22.480 and 43.70.340; adding a new section to chapter 19.27 RCW; adding a new section to chapter 70.114A RCW; adding a new section to chapter 49.17 RCW; adding new sections to chapter 43.70 RCW; adding a new section to chapter 43.330 RCW; and repealing RCW 70.114A.080.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 19.27 RCW to read as follows:

(1) Temporary worker housing shall be constructed, altered, or repaired as provided in chapter 70.114A RCW and chapter . . . , Laws of 1998 (this act). The construction, alteration, or repair of temporary worker housing is not subject to

the codes adopted under RCW 19.27.031, except as provided by rule adopted under chapter 70.114A RCW or chapter . . . , Laws of 1998 (this act).

(2) For the purpose of this section, "temporary worker housing" has the same meaning as provided in RCW 70.114A.020.

(3) This section is applicable to temporary worker housing as of the date of the final adoption of the temporary worker building code by the department of health under section 2 of this act.

NEW SECTION. Sec. 2. A new section is added to chapter 70.114A RCW to read as follows:

(1) The department shall adopt by rule a temporary worker building code in conformance with the temporary worker housing standards developed under the Washington industrial safety and health act, chapter 49.17 RCW, the rules adopted by the state board of health under RCW 70.54.110, and the following guidelines:

(a) The temporary worker building code shall provide construction standards for shelter and associated facilities that are safe, secure, and capable of withstanding the stresses and loads associated with their designated use, and to which they are likely to be subjected by the elements;

(b) The temporary worker building code shall permit and facilitate designs and formats that allow for maximum affordability, consistent with the provision of decent, safe, and sanitary housing;

(c) In developing the temporary worker building code the department of health shall consider:

(i) The need for dormitory type housing for groups of unrelated individuals; and

(ii) The need for housing to accommodate families;

(d) The temporary worker building code shall incorporate the opportunity for the use of construction alternatives and the use of new technologies that meet the performance standards required by law;

(e) The temporary worker building code shall include standards for heating and insulation appropriate to the type of structure and length and season of occupancy;

(f) The temporary worker building code shall include standards for temporary worker housing that are to be used only during periods when no auxiliary heat is required; and

(g) The temporary worker building code shall provide that persons operating temporary worker housing consisting of four or fewer dwelling units or combinations of dwelling units, dormitories, or spaces that house nine or fewer occupants may elect to comply with the provisions of the temporary worker building code, and that unless the election is made, such housing is subject to the codes adopted under RCW 19.27.031.

(2) In adopting the temporary worker building code, the department shall make exceptions to the codes listed in RCW 19.27.031 and chapter 19.27A RCW, in keeping with the guidelines set forth in this section. The initial temporary

worker building code adopted by the department shall be substantially equivalent with the temporary worker building code developed by the state building code council as directed by section 8, chapter 220, Laws of 1995.

(3) The temporary worker building code authorized and required by this section shall be enforced by the department.

The department shall have the authority to allow minor variations from the temporary worker building code that do not compromise the health or safety of workers. Procedures for requesting variations and guidelines for granting such requests shall be included in the rules adopted under this section.

**NEW SECTION.** Sec. 3. A new section is added to chapter 49.17 RCW to read as follows:

By December 1, 1998, the department of labor and industries shall adopt rules requiring electricity in all temporary worker housing and establishing minimum requirements to ensure the safe storage, handling, and preparation of food in these camps, regardless of whether individual or common cooking facilities are in use.

Sec. 4. RCW 43.22.480 and 1995 c 289 s 2 are each amended to read as follows:

(1) The department shall adopt and enforce rules that protect the health, safety, and property of the people of this state by assuring that all factory built housing or factory built commercial structures are structurally sound and that the plumbing, heating, electrical, and other components thereof are reasonably safe. The rules shall be reasonably consistent with recognized and accepted principles of safety and structural soundness, and in adopting the rules the department shall consider, so far as practicable, the standards and specifications contained in the uniform building, plumbing, and mechanical codes, including the barrier free code and the Washington energy code as adopted by the state building code council pursuant to chapter 19.27A RCW, and the national electrical code, including the state rules as adopted pursuant to chapter 19.28 RCW and published by the national fire protection association or, when applicable, the temporary worker building code adopted under section 2 of this act.

(2) The department shall set a schedule of fees which will cover the costs incurred by the department in the administration and enforcement of RCW 43.22.450 through 43.22.490.

(3) The director may adopt rules that provide for approval of a plan that is certified as meeting state requirements or the equivalent by a professional who is licensed or certified in a state whose licensure or certification requirements meet or exceed Washington requirements.

**NEW SECTION.** Sec. 5. A new section is added to chapter 43.70 RCW to read as follows:

(1) Any person providing temporary worker housing consisting of five or more dwelling units, or any combination of dwelling units, dormitories, or spaces that house ten or more occupants, or any person providing temporary worker

housing who makes the election to comply with the temporary worker building code under section 2(1)(g) of this act, shall secure an annual operating license prior to occupancy and shall pay a fee according to RCW 43.70.340. The license shall be conspicuously displayed on site.

(2) Licenses issued under this chapter may be suspended or revoked upon the failure or refusal of the person providing temporary worker housing to comply with the provisions of RCW 70.54.110, or of any rules adopted under this section by the department. All such proceedings shall be governed by the provisions of chapter 34.05 RCW.

(3) The department may assess a civil fine in accordance with RCW 43.70.095 for failure or refusal to obtain a license prior to occupancy of temporary worker housing. The department may refund all or part of the civil fine collected once the operator obtains a valid operating license.

(4) Civil fines under this section shall not exceed twice the cost of the license plus the cost of the initial on-site inspection for the first violation of this section, and shall not exceed ten times the cost of the license plus the cost of the initial on-site inspection for second and subsequent violations within any five-year period. The department may adopt rules as necessary to assure compliance with this section.

**NEW SECTION.** Sec. 6. A new section is added to chapter 43.70 RCW to read as follows:

(1) Any person who constructs, alters, or makes an addition to temporary worker housing consisting of five or more dwelling units, or any combination of dwelling units, dormitories, or spaces that house ten or more occupants, or any person who constructs, alters, or makes an addition to temporary worker housing who elects to comply with the temporary worker building code under section 2(1)(g) of this act, shall:

(a) Submit plans and specifications for the alteration, addition, or new construction of this housing prior to beginning any alteration, addition, or new construction on this housing;

(b) Apply for and obtain a temporary worker housing building permit from the department prior to construction or alteration of this housing; and

(c) Submit a plan review and permit fee to the department of health pursuant to RCW 43.70.340.

(2) The department shall adopt rules as necessary, for the application procedures for the temporary worker housing plan review and permit process.

(3) Any alteration of a manufactured structure to be used for temporary worker housing remains subject to chapter 43.22 RCW, and the rules adopted under chapter 43.22 RCW.

Sec. 7. RCW 43.70.340 and 1990 c 253 s 3 are each amended to read as follows:

(1) The ~~((farmworker housing inspection))~~ temporary worker housing fund is established in the custody of the state treasury. The department ~~((of health))~~



shall deposit all funds received under subsections (2) and (3) of this section and from the legislature to administer a ~~((labor-camp))~~ temporary worker housing permitting, licensing, and inspection program conducted by the department ~~((of health))~~. Disbursement from the fund shall be on authorization of the secretary of health or the secretary's designee. The fund is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements.

(2) There is imposed a fee on each operating license issued by the department ~~((of health))~~ to every operator of ~~((a labor-camp))~~ temporary worker housing that is regulated by the state board of health. ~~((The fee paid under this subsection shall include all necessary inspection of the units to ensure compliance with))~~ In establishing the fee to be paid under this subsection the department shall consider the cost of administering a license as well as enforcing applicable state board of health rules on ~~((labor-camps:~~

—(a) ~~Fifty dollars shall be charged for each labor camp containing six or less units:~~

—(b) ~~Seventy-five dollars shall be charged for each labor camp containing more than six units))~~ temporary worker housing.

(3) There is imposed a fee on each temporary worker housing building permit issued by the department to every operator of temporary worker housing as required by section 6 of this act. The fee shall include the cost of administering a permit as well as enforcing the department's temporary worker building code as adopted under section 2 of this act.

(4) The department shall conduct a fee study for:

(a) A temporary worker housing operator's license;

(b) On-site inspections; and

(c) A plan review and building permit for new construction.

After completion of the study, the department shall adopt these fees by rule by no later than December 31, 1998.

(5) The term of the operating license and the application procedures shall be established, by rule, by the department ~~((of health))~~.

NEW SECTION. Sec. 8. A new section is added to chapter 43.330 RCW to read as follows:

(1) The department shall work with the advisory group established in subsection (2) of this section to review proposals and make prioritized funding recommendations to the department or funding approval board that oversees the distribution of housing trust fund grants and loans to be used for the development, maintenance, and operation of housing for low-income farmworkers.

(2) A farmworker housing advisory group representing growers, farmworkers, and other interested parties shall be formed to assist the department in the review and priority funding recommendations under this section.

NEW SECTION. Sec. 9. RCW 70.114A.080 and 1995 c 220 s 8 are each repealed.

Passed the Senate March 12, 1998.  
Passed the House March 11, 1998.  
Approved by the Governor March 18, 1998.  
Filed in Office of Secretary of State March 18, 1998.

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**CHAPTER 38**

[House Bill 1248]

**FILING OF BUSINESS AND NONPROFIT DOCUMENTS WITH  
THE SECRETARY OF STATE—FAXES**

AN ACT Relating to filing of business and nonprofit documents with the secretary of state; and adding a new section to chapter 43.07 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 43.07 RCW, to be codified immediately following RCW 43.07.170, to read as follows:

(1) The secretary of state shall accept and file in the secretary's office facsimile transmissions of any documents authorized or required to be filed pursuant to Title 23, 23B, 24, or 25 RCW or chapter 18.100 RCW. The acceptance by the secretary of state is conditional upon the document being legible and otherwise satisfying the requirements of state law or rules with respect to form and content, including those established under RCW 43.07.170. If the document must be signed, that requirement is satisfied by a facsimile copy of the signature.

(2) If a fee is required for filing the document, the secretary may reject the document for filing if the fee is not received before, or at the time of, receipt.

Passed the House January 16, 1998.  
Passed the Senate March 4, 1998.  
Approved by the Governor March 18, 1998.  
Filed in Office of Secretary of State March 18, 1998.

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**CHAPTER 39**

[House Bill 1250]

**TRADEMARK APPLICATIONS**

AN ACT Relating to trademarks; and amending RCW 19.77.030.

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

**Sec. 1.** RCW 19.77.030 and 1994 c 60 s 1 are each amended to read as follows:

(1) Subject to the limitations set forth in this chapter, any person who has adopted and is using a trademark in this state may file in the office of the secretary of state, on a form to be furnished by the secretary of state, an application for registration of that trademark setting forth, but not limited to, the following information:

~~((1))~~ (a) The name and business address of the applicant, and, if the applicant is a corporation, its state of incorporation;

~~((2))~~ (b) The particular goods or services in connection with which the trademark is used and the class in which such goods or services fall;

~~((3))~~ (c) The manner in which the trademark is placed on or affixed to the goods or containers, or displayed in connection with such goods, or used in connection with the sale or advertising of the services;

~~((4))~~ (d) The date when the trademark was first used with such goods or services anywhere and the date when it was first used with such goods or services in this state by the applicant or his predecessor in business;

~~((5))~~ (e) A statement that the trademark is presently in use in this state by the applicant;

~~((6))~~ (f) A statement that the applicant believes himself to be the owner of the trademark and believes that no other person has the right to use such trademark in connection with the same or similar goods or services in this state either in the identical form or in such near resemblance thereto as to be likely, when used on or in connection with the goods or services of such other person, to cause confusion or mistake or to deceive; and

~~((7))~~ (g) Such additional information or documents as the secretary of state may reasonably require.

(2) A single application for registration of a trademark may specify all goods or services in a single class or in multiple classes for which the trademark is actually being used (~~(, but may not specify goods or services in different classes)~~).

(3) The application shall be signed by the applicant individual, or by a member of the applicant firm, or by an officer of the applicant corporation, association, union or other organization.

(4) The application shall be accompanied by three specimens or facsimiles of the trademark for ~~((at least one))~~ each of the goods or services for which its registration is requested, and a filing fee, as set by rule by the secretary of state, payable to the secretary of state. The fee established by the secretary may vary based upon the number of categories listed in the application.

(5) An applicant may correct an application previously filed by the secretary of state, within ninety days of the original filing, if the application contains an incorrect statement or the application was defectively executed, signed, or acknowledged. An application is corrected by filing a form provided by the secretary of state, and accompanied by a filing fee established by the secretary by rule. The correction may not change the mark itself. A corrected application is effective on the effective date of the document it corrects, except that it is effective on the date the correction is filed as to persons relying on the uncorrected document and adversely affected by the correction.

(6) An applicant may amend an application previously filed by the secretary of state if the applicant changes the categories in which it does business. An application is amended by filing a form provided by the secretary of state, accompanied by three specimens or facsimiles of the trademark for any new or

additional goods or services for which the amendment is requested, and a filing fee established by the secretary by rule. The amendment or correction may not change the mark itself. An amended application is effective on the date it is filed.

Passed the House January 16, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 18, 1998.

Filed in Office of Secretary of State March 18, 1998.

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## CHAPTER 40

[House Bill 1308]

### HAZARDOUS DEVICES--EXEMPTIONS FOR TECHNICIANS

AN ACT Relating to hazardous devices; and amending RCW 70.74.191.

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

**Sec. 1.** RCW 70.74.191 and 1993 c 293 s 5 are each amended to read as follows:

The laws contained in this chapter and ~~((the ensuing))~~ regulations prescribed by the department of labor and industries pursuant to this chapter shall not apply to:

(1) Explosives or blasting agents in the course of transportation by way of railroad, water, highway, or air under the jurisdiction of, and in conformity with, regulations adopted by the federal department of transportation, the Washington state utilities and transportation commission, and the Washington state patrol;

(2) The laboratories of schools, colleges, and similar institutions if confined to the purpose of instruction or research and if not exceeding the quantity of one pound;

(3) Explosives in the forms prescribed by the official United States Pharmacopoeia;

(4) The transportation, storage, and use of explosives or blasting agents in the normal and emergency operations of federal agencies and departments including the regular United States military departments on military reservations, or the duly authorized militia of any state or territory, or to emergency operations of any state department or agency, any police, or any municipality or county;

(5) A hazardous devices technician when carrying out normal and emergency operations, handling evidence, and operating and maintaining a specially designed emergency response vehicle that carries no more than ten pounds of explosive material or when conducting training and whose employer possesses the minimum safety equipment prescribed by the federal bureau of investigation for hazardous devices work. For purposes of this section, a hazardous devices technician is a person who is a graduate of the federal bureau of investigation hazardous devices school and who is employed by a state, county, or municipality;

(6) The importation, sale, possession, and use of fireworks, signaling devices, flares, fuses, and torpedoes;

~~((6))~~ (7) The transportation, storage, and use of explosives or blasting agents in the normal and emergency avalanche control procedures as conducted by trained and licensed ski area operator personnel. However, the storage, transportation, and use of explosives and blasting agents for such use shall meet the requirements of regulations adopted by the director of labor and industries; and

~~((7))~~ (8) Any violation under this chapter if any existing ordinance of any city, municipality, or county is more stringent than this chapter.

Passed the House January 16, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 18, 1998.

Filed in Office of Secretary of State March 18, 1998.

## CHAPTER 41

[Second Substitute House Bill 150t]

### DRIVERS' LICENSES—CLARIFICATIONS AND TECHNICAL CORRECTIONS

AN ACT Relating to drivers' licenses; amending RCW 46.20.265, 46.20.285, 46.20.308, 46.20.355, 46.25.120, 46.29.040, 46.61.503, 46.61.5152, 46.20.035, 46.20.091, 46.20.161, and 46.20.205; creating a new section; repealing RCW 46.61.5057; and providing an effective date.

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

**NEW SECTION.** Sec. 1. It is the intent and purpose of this act to clarify procedural issues and make technical corrections to statutes relating to drivers' licenses. This act should not be construed as changing existing public policy.

**Sec. 2.** RCW 46.20.265 and 1994 sp.s. c 7 s 439 are each amended to read as follows:

(1) In addition to any other authority to revoke driving privileges under this chapter, the department shall revoke all driving privileges of a juvenile when the department receives notice from a court pursuant to RCW 9.41.040(5), 13.40.265, 66.44.365, 69.41.065, 69.50.420, 69.52.070, or a substantially similar municipal ordinance adopted by a local legislative authority, or from a diversion unit pursuant to RCW 13.40.265. The revocation shall be imposed without hearing.

(2) The driving privileges of the juvenile revoked under subsection (1) of this section shall be revoked in the following manner:

(a) Upon receipt of the first notice, the department shall impose a revocation for one year, or until the juvenile reaches seventeen years of age, whichever is longer.

(b) Upon receipt of a second or subsequent notice, the department shall impose a revocation for two years or until the juvenile reaches eighteen years of age, whichever is longer.

(c) Each offense for which the department receives notice shall result in a separate period of revocation. All periods of revocation imposed under this section that could otherwise overlap shall run consecutively and no period of

revocation imposed under this section shall begin before the expiration of all other periods of revocation imposed under this section or other law.

(3) If the department receives notice from a court that the juvenile's privilege to drive should be reinstated, the department shall immediately reinstate any driving privileges that have been revoked under this section if the minimum term of revocation as specified in RCW 13.40.265(1)(c), 66.44.365(3), 69.41.065(3), 69.50.420(3), 69.52.070(3), or similar ordinance has expired, and subject to subsection (2)(c) of this section.

(4)(a) If the department receives notice pursuant to RCW 13.40.265(2)(b) from a diversion unit that a juvenile has completed a diversion agreement for which the juvenile's driving privileges were revoked, the department shall reinstate any driving privileges revoked under this section as provided in (b) of this subsection, subject to subsection (2)(c) of this section.

(b) If the diversion agreement was for the juvenile's first violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department shall not reinstate the juvenile's privilege to drive until the later of ninety days after the date the juvenile turns sixteen or ninety days after the juvenile entered into a diversion agreement for the offense. If the diversion agreement was for the juvenile's second or subsequent violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department shall not reinstate the juvenile's privilege to drive until the later of the date the juvenile turns seventeen or one year after the juvenile entered into the second or subsequent diversion agreement.

**Sec. 3.** RCW 46.20.285 and 1996 c 199 s 5 are each amended to read as follows:

The department shall forthwith revoke the license of any driver for the period of one calendar year unless otherwise provided in this section, upon receiving a record of the driver's conviction of any of the following offenses, when the conviction has become final:

(1) For vehicular homicide the period of revocation shall be two years. The revocation period shall be tolled during any period of total confinement for the offense;

(2) Vehicular assault. The revocation period shall be tolled during any period of total confinement for the offense;

(3) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle, upon a showing by the department's records that the conviction is the first such conviction under RCW 46.61.5055(1)(b) or a second or subsequent such conviction under RCW 46.61.5055 for the driver within a period of five years. ~~((Upon a showing that the conviction is the third such conviction for the driver within a period of five years, the period of revocation shall be two years))~~ The revocation period shall be as provided in RCW 46.61.5055;

(4) Any felony in the commission of which a motor vehicle is used;

(5) Failure to stop and give information or render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another or resulting in damage to a vehicle that is driven or attended by another;

(6) Perjury or the making of a false affidavit or statement under oath to the department under Title 46 RCW or under any other law relating to the ownership or operation of motor vehicles;

(7) Reckless driving upon a showing by the department's records that the conviction is the third such conviction for the driver within a period of two years.

**Sec. 4.** RCW 46.20.308 and 1995 c 332 s 1 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Immediately notify the department of the arrest and transmit to the department within seventy-two hours, except as delayed as the result of a blood



test, a sworn report or report under a declaration authorized by RCW 9A.72.085 that states:

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

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

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

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

(8) A person receiving notification under subsection (6)(b) of this section may, within thirty days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of one hundred dollars as part of the request. If the request is mailed, it must be postmarked within thirty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required one hundred dollar fee, the department shall afford the person an opportunity for a hearing. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within sixty days following the arrest or following the date notice has been given in the event notice is given by the department following a blood test, unless otherwise agreed to by the department and the person, in which case the action by the department shall be stayed, and any valid temporary license marked under subsection (6)(c) of this section extended, if the person is otherwise eligible for licensing. For the purposes of this section, the scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within this state while having alcohol

in his or her system in a concentration of 0.02 or more and was under the age of twenty-one, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered without express consent as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.10 or more if the person was age twenty-one or over at the time of the arrest, or was 0.02 or more if the person was under the age of twenty-one at the time of the arrest. The sworn report or report under a declaration authorized by RCW 9A.72.085 submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more and was under the age of twenty-one and that the officer complied with the requirements of this section.

A hearing officer shall conduct the hearing, may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer oaths to witnesses. The hearing officer shall not issue a subpoena for the attendance of a witness at the request of the person unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The sworn report or report under a declaration authorized by RCW 9A.72.085 of the law enforcement officer and any other evidence accompanying the report shall be admissible without further evidentiary foundation and the certifications authorized by the criminal rules for courts of limited jurisdiction shall be admissible without further evidentiary foundation. The person may be represented by counsel, may question witnesses, may present evidence, and may testify. The department shall order that the suspension, revocation, denial, or placement in probationary status either be rescinded or sustained.

(9) If the suspension, revocation, denial, or placement in probationary status is sustained after such a hearing, the person whose license, privilege, or permit is suspended, revoked, denied, or placed in probationary status has the right to file a petition in the superior court of the county of arrest to review the final order of revocation by the department in the same manner as an appeal from a decision of a court of limited jurisdiction. Notice of appeal must be filed within thirty days after the date the final order is served or the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ 1.1, or other statutes or rules referencing de novo review, the appeal shall be limited to a review of the record of the administrative hearing. The appellant must pay the costs associated with obtaining the record of the hearing before the hearing officer. The filing of the

appeal does not stay the effective date of the suspension, revocation, denial, or placement in probationary status. A petition filed under this subsection must include the petitioner's grounds for requesting review. Upon granting petitioner's request for review, the court shall review the department's final order of suspension, revocation, denial, or placement in probationary status as expeditiously as possible. The review must be limited to a determination of whether the department has committed any errors of law. The superior court shall accept those factual determinations supported by substantial evidence in the record: (a) That were expressly made by the department; or (b) that may reasonably be inferred from the final order of the department. The superior court may reverse, affirm, or modify the decision of the department or remand the case back to the department for further proceedings. The decision of the superior court must be in writing and filed in the clerk's office with the other papers in the case. The court shall state the reasons for the decision. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant such relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury. If the court stays the suspension, revocation, denial, or placement in probationary status it may impose conditions on such stay.

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

A suspension, revocation, or denial imposed under this section, other than as a result of a breath or blood test refusal, shall be stayed if the person is accepted for deferred prosecution as provided in chapter 10.05 RCW for the incident upon which the suspension, revocation, or denial is based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension, revocation, or denial

reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension, revocation, or denial canceled.

(11) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, revoked, or denied, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license.

**Sec. 5.** RCW 46.20.355 and 1995 1st sp.s. c 17 s 1 are each amended to read as follows:

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

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

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

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

(5) A probationary license shall enable the department and law enforcement personnel to determine that the person is on probationary status. The fact that a

person's driving privilege is in probationary status or that the person has been issued a probationary license shall not be a part of the person's record that is available to insurance companies.

**Sec. 6.** RCW 46.25.120 and 1990 c 250 s 50 are each amended to read as follows:

(1) A person who drives a commercial motor vehicle within this state is deemed to have given consent, subject to RCW 46.61.506, to take a test or tests of that person's blood or breath for the purpose of determining that person's alcohol concentration or the presence of other drugs.

(2) A test or tests may be administered at the direction of a law enforcement officer, who after stopping or detaining the commercial motor vehicle driver, has probable cause to believe that driver was driving a commercial motor vehicle while having alcohol in his or her system.

(3) The law enforcement officer requesting the test under subsection (1) of this section shall warn the person requested to submit to the test that a refusal to submit will result in that person being disqualified from operating a commercial motor vehicle under RCW 46.25.090.

(4) If the person refuses testing, or submits to a test that discloses an alcohol concentration of 0.04 or more, the law enforcement officer shall submit a sworn report to the department certifying that the test was requested pursuant to subsection (1) of this section and that the person refused to submit to testing, or submitted to a test that disclosed an alcohol concentration of 0.04 or more.

(5) Upon receipt of the sworn report of a law enforcement officer under subsection (4) of this section, the department shall disqualify the driver from driving a commercial motor vehicle under RCW 46.25.090, subject to the hearing provisions of RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest. For the purposes of this section, the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle within this state while having alcohol in the person's system, whether the person refused to submit to the test or tests upon request of the officer after having been informed that the refusal would result in the disqualification of the person from driving a commercial motor vehicle, and, if the test was administered, whether the results indicated an ~~((alcoholic))~~ alcohol concentration ~~((in that person's blood))~~ of 0.04 percent or more. The department shall order that the disqualification of the person either be rescinded or sustained. Any decision by the department disqualifying a person from driving a commercial motor vehicle is stayed and does not take effect while a formal hearing is pending under this section or during the pendency of a subsequent appeal to superior court so long as there is no conviction for a moving violation or no finding that the person has committed a traffic infraction that is a moving violation during the pendency of the hearing and appeal. If the disqualification of the person is sustained after the hearing, the person who is disqualified may file a petition in the superior court

of the county of arrest to review the final order of disqualification by the department in the manner provided in RCW 46.20.334.

**Sec. 7.** RCW 46.29.040 and 1963 c 169 s 4 are each amended to read as follows:

Any order of the director under the provisions of this chapter shall be subject to review, at the instance of any party in interest, by appeal to the superior court of Thurston county, or at his option to the superior court of the county of his residence. The scope of such review shall be limited to that prescribed by RCW 7.16.120 governing review by certiorari. Notice of appeal must be filed within ~~((ten))~~ thirty days after ~~((receipt))~~ service of the notice of such order. The court shall determine whether the filing of the appeal shall operate as a stay of any such order of the director. Upon the filing the notice of appeal the court shall issue an order to the director to show cause why the order should not be reversed or modified. The order to show cause shall be returnable not less than ten nor more than thirty days after the date of service thereof upon the director. The court after hearing the matter may modify, affirm or reverse the order of the director in whole or in part.

**Sec. 8.** RCW 46.61.503 and 1995 c 332 s 2 are each amended to read as follows:

(1) Notwithstanding any other provision of this title, a person is guilty of driving or being in physical control of a motor vehicle after consuming alcohol if the person operates or is in physical control of a motor vehicle within this state and the person:

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

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

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

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

(4) A violation of this section is a misdemeanor.

**Sec. 9.** RCW 46.61.5152 and 1994 c 275 s 40 are each amended to read as follows:

In addition to penalties that may be imposed under RCW (~~46.61.5051, 46.61.5052, or 46.61.5053~~) 46.61.5055, the court may require a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 or who enters a deferred prosecution program under RCW 10.05.020 based on a violation of RCW 46.61.502 or 46.61.504, to attend an educational program focusing on the emotional, physical, and financial suffering of victims who were injured by persons convicted of driving while under the influence of intoxicants.

**Sec. 10.** RCW 46.20.035 and 1993 c 452 s 1 are each amended to read as follows:

(1) The department may not issue an identicard or a Washington state driver's license, except as provided in RCW 46.20.116, unless the applicant has satisfied the department regarding his or her identity. Except as provided in subsection (2) of this section, an applicant has not satisfied the identity requirements of this section unless he or she displays or provides the department with at least one of the following pieces of valid identifying documentation:

(a) A valid or recently expired driver's license or instruction permit that contains the signature, date of birth, and a photograph of the applicant;

(b) A Washington state identicard or an identification card issued by another state that contains the signature and a photograph of the applicant;

(c) An identification card issued by the United States, a state, or an agency of either the United States or a state, of a kind commonly used to identify the members of employees of the government agency, that contains the signature and a photograph of the applicant;

(d) A military identification card that contains the signature and a photograph of the applicant;

(e) A United States passport that contains the signature and a photograph of the applicant;

(f) An immigration and naturalization service form that contains the signature and photograph of the applicant; or

(g) If the applicant is a minor, an affidavit of the applicant's parent or guardian where the parent or guardian displays or provides at least one piece of identifying documentation as specified in this subsection along with additional documentation establishing the relationship between the parent or guardian and the applicant.

(2) A person unable to provide identifying documentation as specified in subsection (1) of this section may request that the department review other available documentation in order to ascertain identity. The department may waive the requirement for specific identifying documentation under subsection (1) of this section if it finds that other documentation clearly establishes the identity of the applicant.

(3) The form of an applicant's name, as established under this section, must be the person's name of record for the purposes of this chapter.

**Sec. 11.** RCW 46.20.091 and 1996 c 287 s 5 are each amended to read as follows:

(1) Every application for an instruction permit or for an original driver's license shall be made upon a form prescribed and furnished by the department which shall be sworn to and signed by the applicant before a person authorized to administer oaths. An applicant making a false statement under this subsection is guilty of false swearing, a gross misdemeanor, under RCW 9A.72.040. Every application for an instruction permit containing a photograph shall be accompanied by a fee of five dollars. The department shall forthwith transmit the fees collected for instruction permits and temporary drivers' permits to the state treasurer.

(2) Every such application shall state the ((fuh)) name of record, date of birth, sex, and Washington residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has theretofore been licensed as a driver or chauffeur, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation, or refusal, and shall state such additional information as the department shall require, including a statement that identifying documentation presented by the applicant is valid.

(3) Whenever application is received from a person previously licensed in another jurisdiction, the department shall request a copy of such driver's record from such other jurisdiction. When received, the driving record shall become a part of the driver's record in this state.

(4) Whenever the department receives request for a driving record from another licensing jurisdiction, the record shall be forwarded without charge if the other licensing jurisdiction extends the same privilege to the state of Washington. Otherwise there shall be a reasonable charge for transmittal of the record, the amount to be fixed by the director of the department.

**Sec. 12.** RCW 46.20.161 and 1990 c 250 s 40 are each amended to read as follows:

The department, upon receipt of a fee of fourteen dollars, which includes the fee for the required photograph, shall issue to every applicant qualifying therefor a driver's license, which license shall bear thereon a distinguishing number assigned to the licensee, the ((fuh)) name of record, date of birth, Washington residence address, photograph, and a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write his usual signature with pen and ink immediately upon receipt of the license. No license is valid until it has been so signed by the licensee.

**Sec. 13.** RCW 46.20.205 and 1996 c 30 s 4 are each amended to read as follows:



Whenever any person after applying for or receiving a driver's license or identocard moves from the address named in the application or in the license or identocard issued to him or her or when the name of record of a licensee or holder of an identocard is changed by marriage or otherwise, the person shall within ten days thereafter notify the department in writing on a form provided by the department of his or her old and new addresses or of such former and new names and of the number of any license then held by him or her. The written notification, or other means as designated by rule of the department, is the exclusive means by which the address of record maintained by the department concerning the licensee or identocard holder may be changed. The form must contain a place for the person to indicate that the address change is not for voting purposes. The department of licensing shall notify the secretary of state by the means described in RCW 29.07.270(3) of all change of address information received by means of this form except information on persons indicating that the change is not for voting purposes. Any notice regarding the cancellation, suspension, revocation, disqualification, probation, or nonrenewal of the driver's license, commercial driver's license, driving privilege, or identocard mailed to the address of record of the licensee or identocard holder is effective notwithstanding the licensee's or identocard holder's failure to receive the notice. The department of licensing shall not change the name of record of a person under this section unless the person has again satisfied the department regarding his or her identity in the manner provided by RCW 46.20.035.

NEW SECTION. Sec. 14. RCW 46.61.5057 and 1994 c 275 s 11 are each repealed.

NEW SECTION. Sec. 15. This act takes effect July 1, 1998.

Passed the House February 9, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 18, 1998.

Filed in Office of Secretary of State March 18, 1998.

## CHAPTER 42

[House Bill 2355]

### STATE PARK LANDS—DISPOSAL—MANAGEMENT AND HEARINGS

AN ACT Relating to state park lands; and amending RCW 43.51.210 and 43.51.215.

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

Sec. 1. RCW 43.51.210 and 1984 c 87 s 2 are each amended to read as follows:

Whenever the state parks and recreation commission finds that any land under its control cannot advantageously be used for park purposes, it is authorized to dispose of such land. If such lands are school or other grant lands, control thereof shall be relinquished by resolution of the commission to the proper state officials. If such lands were acquired under restrictive conveyances by which the

state may hold them only so long as they are used for park purposes, they may be returned to the donor or grantors by the commission. All other such lands may be either sold by the commission to the highest bidder or exchanged for other lands of equal value by the commission, and all conveyance documents shall be executed by the governor. All such exchanges shall be accompanied by a transfer fee, to be set by the commission and paid by the other party to the transfer; such fee shall be paid into the parkland acquisition account established under RCW 43.51.200. Sealed bids on all sales shall be solicited at least twenty days in advance of the sale date by an advertisement appearing at least in three consecutive issues of a newspaper of general circulation in the county in which the land to be sold is located. If the commission feels that no bid received adequately reflects the fair value of the land to be sold, it may reject all bids, and may call for new bids. All proceeds derived from the sale of such park property shall be paid into the ~~((state general fund))~~ park land acquisition account. All land considered for exchange shall be evaluated by the commission to determine its adaptability to park usage. The equal value of all lands exchanged shall first be determined by the appraisals to the satisfaction of the commission: PROVIDED, That no sale or exchange of state park lands shall be made without the unanimous consent of the commission.

**Sec. 2.** RCW 43.51.215 and 1975 1st ex.s. c 107 s 1 are each amended to read as follows:

~~((At least ten days but not more than twenty-five days))~~ Before the director of parks and recreation presents a proposed exchange to the parks and recreation commission involving an exchange of state land pursuant to this chapter, the director shall hold a public hearing on the proposal in the county where the state lands or the greatest proportion thereof is located. Ten days but not more than twenty-five days prior to such hearing, the director shall publish a paid public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing, at least once in one or more daily newspapers of general circulation in the county and at least once in one or more weekly newspapers circulated in the area where the state owned land is located. A news release pertaining to the hearing shall be disseminated among printed and electronic media in the area where the state land is located. The public notice and news release also shall identify lands involved in the proposed exchange and describe the purposes of the exchange and proposed use of the lands involved. A summary of the testimony presented at the hearings shall be prepared for the commission's consideration when reviewing the director's exchange proposal. If there is a failure to substantially comply with the procedures set forth in this section, then the exchange agreement shall be subject to being declared invalid by a court. Any such suit must be brought within one year from the date of the exchange agreement.

Passed the House February 13, 1998.  
Passed the Senate March 4, 1998.  
Approved by the Governor March 18, 1998.  
Filed in Office of Secretary of State March 18, 1998.

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**CHAPTER 43**

[Substitute House Bill 2523]

**FIRE TRAINING ACTIVITIES—REGULATION OF AIR CONTAMINANTS****AN ACT** Relating to fire training activities; and reenacting and amending RCW 70.94.650.

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

**Sec. 1.** RCW 70.94.650 and 1995 c 362 s 1 and 1995 c 58 s 1 are each reenacted and amended to read as follows:

(1) Any person who proposes to set fires in the course of:

(a) Weed abatement;

(b) Instruction in methods of fire fighting, except training to fight structural fires as provided in RCW 52.12.150 or training to fight aircraft crash rescue fires as provided in subsection (5) of this section, and except forest fire training; or

(c) Agricultural activities,

shall obtain a permit from an air pollution control authority, the department of ecology, or a local entity delegated permitting authority under RCW 70.94.654. General permit criteria of state-wide applicability shall be established by the department, by rule, after consultation with the various air pollution control authorities. Permits shall be issued under this section based on seasonal operations or by individual operations, or both. All permits shall be conditioned to insure that the public interest in air, water, and land pollution and safety to life and property is fully considered. In addition to any other requirements established by the department to protect air quality pursuant to other laws, applicants for permits must show that the setting of fires as requested is the most reasonable procedure to follow in safeguarding life or property under all circumstances or is otherwise reasonably necessary to successfully carry out the enterprise in which the applicant is engaged, or both. All burning permits will be designed to minimize air pollution insofar as practical. Nothing in this section shall relieve the applicant from obtaining permits, licenses, or other approvals required by any other law. An application for a permit to set fires in the course of agricultural burning for controlling diseases, insects, weed abatement or development of physiological conditions conducive to increased crop yield, shall be acted upon within seven days from the date such application is filed. The department of ecology and local air authorities shall provide convenient methods for issuance and oversight of agricultural burning permits. The department and local air authorities shall, through agreement, work with counties and cities to provide convenient methods for granting permission for agricultural burning, including telephone, facsimile transmission, issuance from local city or county offices, or other methods. A local air authority administering the permit program under this

subsection (1)(c) shall not limit the number of days of allowable agricultural burning, but may consider the time of year, meteorological conditions, and other criteria specified in rules adopted by the department to implement this subsection (1)(c).

(2) Permit fees shall be assessed for burning under this section and shall be collected by the department of ecology, the appropriate local air authority, or a local entity delegated permitting authority pursuant to RCW 70.94.654 at the time the permit is issued. All fees collected shall be deposited in the air pollution control account created in RCW 70.94.015, except for that portion of the fee necessary to cover local costs of administering a permit issued under this section. Fees shall be set by rule by the permitting agency at the level determined by the task force created by subsection (4) of this section, but shall not exceed two dollars and fifty cents per acre to be burned. After fees are established by rule, any increases in such fees shall be limited to annual inflation adjustments as determined by the state office of the economic and revenue forecast council.

(3) Conservation districts and the Washington State University agricultural extension program in conjunction with the department shall develop public education material for the agricultural community identifying the health and environmental effects of agricultural outdoor burning and providing technical assistance in alternatives to agricultural outdoor burning.

(4) An agricultural burning practices and research task force shall be established under the direction of the department. The task force shall be composed of a representative from the department who shall serve as chair; one representative of eastern Washington local air authorities; three representatives of the agricultural community from different agricultural pursuits; one representative of the department of agriculture; two representatives from universities or colleges knowledgeable in agricultural issues; one representative of the public health or medical community; and one representative of the conservation districts. The task force shall identify best management practices for reducing air contaminant emissions from agricultural activities and provide such information to the department and local air authorities. The task force shall determine the level of fees to be assessed by the permitting agency pursuant to subsection (2) of this section, based upon the level necessary to cover the costs of administering and enforcing the permit programs, to provide funds for research into alternative methods to reduce emissions from such burning, and to the extent possible be consistent with fees charged for such burning permits in neighboring states. The fee level shall provide, to the extent possible, for lesser fees for permittees who use best management practices to minimize air contaminant emissions. The task force shall identify research needs related to minimizing emissions from agricultural burning and alternatives to such burning. Further, the task force shall make recommendations to the department on priorities for spending funds provided through this chapter for research into alternative methods to reduce emissions from agricultural burning.

(5) A permit is not required under this section, or under RCW 70.94.743 through 70.94.780, from an air pollution control authority, the department, or any local entity with delegated permit authority, for aircraft crash rescue fire training activities meeting the following conditions:

(a) Fire fighters participating in the training fires must be limited to those who provide fire fighting support to an airport that is either certified by the federal aviation administration or operated in support of military or governmental activities;

(b) The fire training may not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715 for the area where training is to be conducted;

(c) The number of training fires allowed per year without a permit shall be the minimum number necessary to meet federal aviation administration or other federal safety requirements; ~~((and))~~

(d) The facility shall use current technology and be operated in a manner that will minimize, to the extent possible, the air contaminants generated during operation; and

(e) Prior to the commencement of the aircraft fire training, the organization conducting training shall notify both the: (i) Local fire district or fire department; and (ii) air pollution control authority, department of ecology, or local entity delegated permitting authority under RCW 70.94.654, having jurisdiction within the area where training is to be conducted.

Written approval from the department or a local air pollution control authority shall be obtained prior to the initial operation of aircraft crash rescue fire training. Such approval will be granted to fire training activities meeting the conditions in this subsection.

(6) Aircraft crash rescue fire training activities conducted in compliance with this subsection are not subject to the prohibition, in RCW 70.94.775(1), of outdoor fires containing petroleum products and are not considered outdoor burning under RCW 70.94.743 through 70.94.780.

~~(((6) Subsection (5) of this section shall expire on the earlier of the following dates: (a) July 1, 1998; or (b) the date upon which the North Bend fire training center is fully operational for aircraft crash rescue fire training activities.))~~

(7) To provide for fire fighting instruction in instances not governed by subsection (6) of this section, or other actions to protect public health and safety, the department or a local air pollution control authority may issue permits that allow limited burning of prohibited materials listed in RCW 70.94.775(1).

Passed the House February 10, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 18, 1998.

Filed in Office of Secretary of State March 18, 1998.

**CHAPTER 44**

[House Bill 2537]

**SANITARY CONTROL OF SHELLFISH**

AN ACT Relating to sanitary control of shellfish; and adding a new section to chapter 69.30 RCW.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 69.30 RCW to read as follows:

(1) A person whose license or certificate of approval is denied, revoked, or suspended as a result of violations of this chapter or rules adopted under this chapter may not:

(a) Serve as the person in charge of, be employed by, manage, or otherwise participate to any degree in a shellfish operation licensed or certified under this chapter or rules adopted under this chapter; or

(b) Participate in the harvesting, shucking, packing, or shipping of shellfish in commercial quantities or for sale for human consumption.

(2) This section applies to a person only during the period of time in which that person's license or certificate of approval is denied, revoked, or suspended.

Passed the House February 10, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 18, 1998.

Filed in Office of Secretary of State March 18, 1998.

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**CHAPTER 45**

[Substitute House Bill 2560]

**TRUST COMPANIES—REGULATIONS**

AN ACT Relating to the powers of trust companies; amending RCW 30.04.280 and 30.53.070; and adding a new section to chapter 30.08 RCW.

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

Sec. 1. RCW 30.04.280 and 1996 c 2 s 4 are each amended to read as follows:

No person shall engage in banking except in compliance with and subject to the provisions of this title, unless it is a national bank or except insofar as it may be authorized so to do by the laws of this state relating to mutual savings banks or savings and loan associations. A corporation shall not engage in a trust business except in compliance with and subject to the provisions of this title. A bank shall not engage in a trust business except as authorized under this title. A bank or trust company shall not establish any branch except in accordance with the provisions of this title. Except as authorized by federal law or by another law of this state, a trust company incorporated under the laws of another state, a national trust company or national bank the main office of which is located in such other state, or a federal savings bank the home office of which is located in such other state, shall not be permitted to engage in a trust business in this state

on more favorable terms and conditions than the terms and conditions on which trust companies incorporated under this chapter and mutual savings banks engaged in trust business under RCW 32.08.140, 32.08.142, 32.08.210, and 32.08.215 are permitted to engage in trust business in such other state.

**NEW SECTION.** Sec. 2. A new section is added to chapter 30.08 RCW to read as follows:

Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a trust company has under the laws of this state, a trust company shall have the powers and authorities conferred as of the effective date of this act upon a federally chartered trust company doing business in this state. A trust company may exercise the powers and authorities conferred on a federally chartered trust company after this date only if the director finds that the exercise of such powers and authorities:

- (1) Serves the convenience and advantage of trustors; and
- (2) Maintains the fairness of competition and parity between state-chartered trust companies and federally chartered trust companies.

As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance and operational matters.

The restrictions, limitations, and requirements applicable to specific powers or authorities of federally chartered trust companies shall apply to trust companies exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted trust companies solely under this section.

Sec. 3. RCW 30.53.070 and 1994 c 256 s 65 are each amended to read as follows:

(1) The owner of shares of a trust company that were voted against a merger to result in a trust company shall be entitled to receive their value in cash, if and when the merger becomes effective, upon written demand made to the resulting trust company at any time within thirty days after the effective date of the merger, accompanied by the surrender of the stock certificates. The value of the shares shall be determined, as of the date of the stockholders' meeting approving the merger, by three appraisers, one to be selected by the owners of two-thirds of the dissenting shares, one by the board of directors of the resulting trust company, and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If the appraisal is not completed within ninety days after the merger becomes effective, the director shall cause an appraisal to be made. ~~((The expenses of appraisal shall be paid by the resulting trust company.))~~

(2) The dissenting shareholders shall bear, on a pro rata basis based on number of dissenting ~~((shared {shares}))~~ shares owned, the cost of their appraisal and one-half of the cost of a third appraisal, and the resulting trust company shall bear the cost of its appraisal and one-half of the cost of the third appraisal. If the director causes an appraisal to be made, the cost of that appraisal shall be borne equally by the dissenting shareholders and the resulting trust company, with the

dissenting shareholders sharing their half of the cost on a pro rata basis based on number of dissenting shares owned.

(3) The resulting trust company may fix an amount which it considers to be not more than the fair market value of the shares of a merging trust company at the time of the stockholders' meeting approving the merger, that it will pay dissenting shareholders of the trust company entitled to payment in cash. The amount due under an accepted offer or under the appraisal shall constitute a debt of the resulting trust company.

Passed the House February 10, 1998.

Passed the Senate March 5, 1998.

Approved by the Governor March 18, 1998.

Filed in Office of Secretary of State March 18, 1998.

**CHAPTER 46**

[Substitute House Bill 2576]

**MANUFACTURED OR MOBILE HOMES—NEGOTIATION OF LAND TRANSFERS**

AN ACT Relating to manufactured or mobile homes; and amending RCW 46.70.011, 18.85.010, and 18.85.330.

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

**Sec. 1.** RCW 46.70.011 and 1996 c 194 s 1 are each amended to read as follows:

As used in this chapter:

(1) "Vehicle" means and includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(2) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, and which is required to be registered and titled under Title 46 RCW, Motor Vehicles.

(3) "Vehicle dealer" means any person, firm, association, corporation, or trust, not excluded by subsection (4) of this section, engaged in the business of buying, selling, listing, exchanging, offering, brokering, leasing with an option to purchase, auctioning, soliciting, or advertising the sale of new or used vehicles, or arranging or offering or attempting to solicit or negotiate on behalf of others, a sale, purchase, or exchange of an interest in new or used motor vehicles, irrespective of whether the motor vehicles are owned by that person. Vehicle dealers shall be classified as follows:

(a) A "motor vehicle dealer" is a vehicle dealer that deals in new or used motor vehicles, or both;

(b) A "mobile home and travel trailer dealer" is a vehicle dealer that deals in mobile homes, park trailers, or travel trailers, or more than one type of these vehicles;



(c) A "miscellaneous vehicle dealer" is a vehicle dealer that deals in motorcycles or vehicles other than motor vehicles or mobile homes and travel trailers or any combination of such vehicles.

(4) The term "vehicle dealer" does not include, nor do the licensing requirements of RCW 46.70.021 apply to, the following persons, firms, associations, or corporations:

(a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by, or acting under a judgment or order of, any court; or

(b) Public officers while performing their official duties; or

(c) Employees of vehicle dealers who are engaged in the specific performance of their duties as such employees; or

(d) Any person engaged in an isolated sale of a vehicle in which ~~((he))~~ that person is the registered or legal owner, or both, thereof; or

(e) Any person, firm, association, corporation, or trust, engaged in the selling of equipment other than vehicles, subject to registration, used for agricultural or industrial purposes; or

(f) A real estate broker licensed under chapter 18.85 RCW, or ~~((his authorized representative))~~ an affiliated licensee, who, on behalf of ~~((the legal or registered owner of a used mobile home))~~ another negotiates the purchase, sale, lease, or exchange of ~~((the used))~~ a manufactured or mobile home in conjunction with the purchase, sale, exchange, rental, or lease of the land upon which the ~~((used))~~ manufactured or mobile home is, or will be, located ~~((and the real estate broker is not acting as an agent, subagent, or representative of a vehicle dealer licensed under this chapter))~~; or

(g) Owners who are also operators of the special highway construction equipment or of the highway construction equipment for which a vehicle license and display vehicle license number plate is required as defined in RCW 46.16.010; or

(h) Any bank, trust company, savings bank, mutual savings bank, savings and loan association, credit union, and any parent, subsidiary, or affiliate thereof, authorized to do business in this state under state or federal law with respect to the sale or other disposition of a motor vehicle owned and used in their business; or with respect to the acquisition and sale or other disposition of a motor vehicle in which the entity has acquired an interest as a lessor, lessee, or secured party.

(5) "Vehicle salesperson" means any person who for any form of compensation sells, auctions, leases with an option to purchase, or offers to sell or to so lease vehicles on behalf of a vehicle dealer.

(6) "Department" means the department of licensing, which shall administer and enforce the provisions of this chapter.

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

(8) "Manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new and unused vehicles or remanufactures vehicles in whole or in part and further includes the terms:

(a) "Distributor," which means any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new and unused vehicle to vehicle dealers or who maintains factory representatives.

(b) "Factory branch," which means a branch office maintained by a manufacturer for the purpose of selling or offering for sale, vehicles to a distributor, wholesaler, or vehicle dealer, or for directing or supervising in whole or in part factory or distributor representatives, and further includes any sales promotion organization, whether a person, firm, or corporation, which is engaged in promoting the sale of new and unused vehicles in this state of a particular brand or make to vehicle dealers.

(c) "Factory representative," which means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or promoting for the sale of their vehicles or for supervising or contracting with their dealers or prospective dealers.

(9) "Established place of business" means a location meeting the requirements of RCW 46.70.023(1) at which a vehicle dealer conducts business in this state.

(10) "Principal place of business" means that dealer firm's business location in the state, which place the dealer designates as their principal place of business.

(11) "Subagency" means any place of business of a vehicle dealer within the state, which place is physically and geographically separated from the principal place of business of the firm or any place of business of a vehicle dealer within the state, at which place the firm does business using a name other than the principal name of the firm, or both.

(12) "Temporary subagency" means a location other than the principal place of business or subagency within the state where a licensed vehicle dealer may secure a license to conduct the business and is licensed for a period of time not to exceed ten days for a specific purpose such as auto shows, shopping center promotions, tent sales, exhibitions, or similar merchandising ventures. No more than six temporary subagency licenses may be issued to a licensee in any twelve-month period.

(13) "Wholesale vehicle dealer" means a vehicle dealer who buys and sells other than at retail.

(14) "Retail vehicle dealer" means a vehicle dealer who may buy and sell at both wholesale and retail.

(15) "Listing dealer" means a used mobile home dealer who makes contracts with sellers who will compensate the dealer for obtaining a willing purchaser for the seller's mobile home.

(16) "Auction" means a transaction conducted by means of exchanges between an auctioneer and the members of the audience, constituting a series of oral invitations for offers for the purchase of vehicles made by the auctioneer, offers to purchase by members of the audience, and the acceptance of the highest or most favorable offer to purchase.

(17) "Auction company" means a sole proprietorship, partnership, corporation, or other legal or commercial entity licensed under chapter 18.11 RCW that only sells or offers to sell vehicles at auction or only arranges or sponsors auctions.

(18) "Buyer's agent" means any person, firm, partnership, association, limited liability company, limited liability partnership, or corporation retained or employed by a consumer to arrange for or to negotiate, or both, the purchase of a new motor vehicle on behalf of the consumer, and who is paid a fee or receives other compensation from the consumer for its services.

(19) "New motor vehicle" means any motor vehicle that is self-propelled and is required to be registered and titled under Title 46 RCW, has not been previously titled to a retail purchaser or lessee, and is not a "used vehicle" as defined under RCW 46.04.660.

Sec. 2. RCW 18.85.010 and 1997 c 322 s 1 are each amended to read as follows:

In this chapter words and phrases have the following meanings unless otherwise apparent from the context:

(1) "Real estate broker," or "broker," means a person, while acting for another for commissions or other compensation or the promise thereof, or a licensee under this chapter while acting in his or her own behalf, who:

(a) Sells or offers for sale, lists or offers to list, buys or offers to buy real estate or business opportunities, or any interest therein, for others;

(b) Negotiates or offers to negotiate, either directly or indirectly, the purchase, sale, exchange, lease, or rental of real estate or business opportunities, or any interest therein, for others;

(c) Negotiates or offers to negotiate, either directly or indirectly, the purchase, sale, lease, or exchange of a ~~((used))~~ manufactured or mobile home in conjunction with the purchase, sale, exchange, rental, or lease of the land upon which the ~~((used))~~ manufactured or mobile home is, or will be, located;

(d) Advertises or holds himself or herself out to the public by any oral or printed solicitation or representation that he or she is so engaged; or

(e) Engages, directs, or assists in procuring prospects or in negotiating or closing any transaction which results or is calculated to result in any of these acts;

(2) "Real estate salesperson" or "salesperson" means any natural person employed, either directly or indirectly, by a real estate broker, or any person who represents a real estate broker in the performance of any of the acts specified in subsection (1) of this section;

(3) An "associate real estate broker" is a person who has qualified as a "real estate broker" who works with a broker and whose license states that he or she is associated with a broker;

(4) The word "person" as used in this chapter shall be construed to mean and include a corporation, limited liability company, limited liability partnership, or partnership, except where otherwise restricted;

(5) "Business opportunity" shall mean and include business, business opportunity and good will of an existing business or any one or combination thereof;

(6) "Commission" means the real estate commission of the state of Washington;

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

(8) "Real estate multiple listing association" means any association of real estate brokers:

(a) Whose members circulate listings of the members among themselves so that the properties described in the listings may be sold by any member for an agreed portion of the commission to be paid; and

(b) Which require in a real estate listing agreement between the seller and the broker, that the members of the real estate multiple listing association shall have the same rights as if each had executed a separate agreement with the seller;

(9) "Clock hours of instruction" means actual hours spent in classroom instruction in any tax supported, public technical college, community college, or any other institution of higher learning or a correspondence course from any of the aforementioned institutions certified by such institution as the equivalent of the required number of clock hours, and the real estate commission may certify courses of instruction other than in the aforementioned institutions; and

(10) "Incapacitated" means the physical or mental inability to perform the duties of broker prescribed by this chapter.

**Sec. 3.** RCW 18.85.330 and 1997 c 322 s 20 are each amended to read as follows:

(1) Except under subsection (4) of this section, it shall be unlawful for any licensed broker to pay any part of his or her commission or other compensation to any person who is not a licensed real estate broker in any state of the United States or its possessions or any province of the Dominion of Canada or any foreign jurisdiction with a real estate regulatory program.

(2) Except under subsection (4) of this section, it shall be unlawful for any licensed broker to pay any part of his or her commission or other compensation to a real estate salesperson not licensed to do business for such broker.

(3) Except under subsection (4) of this section, it shall be unlawful for any licensed salesperson to pay any part of his or her commission or other compensation to any person, whether licensed or not, except through his or her broker.

(4) A commission may be shared with a manufactured housing retailer, licensed under chapter 46.70 RCW, on the sale of personal property manufactured housing sold in conjunction with the sale or lease of land.

Passed the House February 10, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 18, 1998.

Filed in Office of Secretary of State March 18, 1998.

## CHAPTER 47

[House Bill 2663]

FILING OF AFFILIATED TRANSACTIONS WITH THE  
UTILITIES AND TRANSPORTATION COMMISSION

AN ACT Relating to filing of affiliated transactions with the utilities and transportation commission; and amending RCW 80.16.020, 80.16.030, 80.16.050, 80.16.060, 80.16.070, 81.16.020, 81.16.030, 81.16.050, 81.16.060, and 81.16.070.

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

**Sec. 1.** RCW 80.16.020 and 1961 c 14 s 80.16.020 are each amended to read as follows:

~~((No))~~ Every public service company shall file with the commission a verified copy, or a verified summary if unwritten, of a contract or arrangement providing for the furnishing of management, supervisory construction, engineering, accounting, legal, financial, or similar services, ~~((and no))~~ or any contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing, other than those ~~((above))~~ enumerated in this section, hereafter made or entered into between a public service company and any affiliated interest as defined in this chapter, including open account advances from or to ~~((such))~~ the affiliated interests~~((, shall be valid or effective unless and until such contract or arrangement shall have received the approval of the commission. It shall be the duty of every public service company to file with the commission, a verified copy or a verified summary of any such unwritten contract or arrangement, and also of all such contracts and arrangements, whether written or unwritten, entered into prior to March 18, 1933 and in force and effect at that time. The commission shall approve such contract or arrangement hereafter made or entered into only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest; otherwise the contract or arrangement shall not be approved)).~~ The filing must be made prior to the effective date of the contract or arrangement. Modifications or amendments to the contracts or arrangements with affiliated interests must be filed with the commission prior to the effective date of the modification or amendment. Any time after receipt of the contract or arrangement, the commission may institute an investigation and disapprove the contract, arrangement, modification, or amendment thereto if the commission finds the public service company has failed to prove that it is reasonable and consistent with the public interest. The commission ~~((shall not be required to approve))~~ may disapprove any such contract or arrangement ~~((unless))~~ if satisfactory proof is not submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service described ~~((herein))~~ in this section.

**Sec. 2.** RCW 80.16.030 and 1961 c 14 s 80.16.030 are each amended to read as follows:

In any proceeding, whether upon the commission's own motion or upon complaint, involving the rates or practices of any public service company, the commission may exclude from the accounts of ~~((such))~~ the public service company any payment or compensation to an affiliated interest for any services rendered or property or service furnished, as ~~((above))~~ described in this section, under existing contracts or arrangements with ~~((such))~~ the affiliated interest unless ~~((such))~~ the public service company ~~((shall))~~ establishes the reasonableness of ~~((such))~~ the payment or compensation. In ~~((such))~~ the proceeding the commission shall disallow ~~((such))~~ the payment or compensation, in whole or in part, in the absence of satisfactory proof that it is reasonable in amount. In such a proceeding, any payment or compensation may be disapproved or disallowed by the commission, in whole or in part, ~~((unless))~~ if satisfactory proof is not submitted to the commission of the cost to the affiliated interest of rendering the service or furnishing the property or service ~~((above))~~ described in this section.

Sec. 3. RCW 80.16.050 and 1961 c 14 s 80.16.050 are each amended to read as follows:

The commission shall have continuing supervisory control over the terms and conditions of such contracts and arrangements as are herein described so far as necessary to protect and promote the public interest. The commission shall have the same jurisdiction over the modifications or amendment of contracts or arrangements as are herein described as it has over such original contracts or arrangements. The fact that a contract or arrangement has been filed with, or the commission ~~((shall have))~~ has approved entry into such contracts or arrangements as described herein shall not preclude disallowance or disapproval of payments made pursuant thereto, if upon actual experience under such contract or arrangement, it appears that the payments provided for or made were or are unreasonable. Every order of the commission approving any such contract or arrangement shall be expressly conditioned upon the reserved power of the commission to revise and amend the terms and conditions thereof, if, when, and as necessary to protect and promote the public interest.

Sec. 4. RCW 80.16.060 and 1961 c 14 s 80.16.060 are each amended to read as follows:

Whenever the commission shall find upon investigation that any public service company is giving effect to any such contract or arrangement without such contract or arrangement having ~~((received the commission's approval))~~ been filed or approved, the commission may issue a summary order prohibiting the public service company from treating any payments made under the terms of such contract or arrangement as operating expenses or as capital expenditures for rate or valuation purposes, unless and until such contract or arrangement has been filed with the commission or until payments ~~((shall))~~ have received the approval of the commission.

Sec. 5. RCW 80.16.070 and 1961 c 14 s 80.16.070 are each amended to read as follows:

Whenever the commission (~~shall~~) finds upon investigation that any public service company is making payments to an affiliated interest, although (~~such~~) the payments have been disallowed (and) or disapproved by the commission in a proceeding involving the public service company's rates or practices, the commission shall issue a summary order directing the public service company (from treating such) to not treat the payments as operating expenses or capital expenditures for rate or valuation purposes, unless and until (such) the payments (shall) have received the approval of the commission.

Sec. 6. RCW 81.16.020 and 1961 c 14 s 81.16.020 are each amended to read as follows:

~~(No) Every public service company shall file with the commission a verified copy, or a verified summary if unwritten, of a contract or arrangement providing for the furnishing of management, supervisory construction, engineering, accounting, legal, financial, or similar services, (and no) or any contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing, other than those (above) enumerated in this section, hereafter made or entered into between a public service company and any affiliated interest as defined in this chapter, including open account advances from or to (such) the affiliated interests (except open account advances from or to a common carrier subject to the provisions of part one of the interstate commerce act, shall be valid or effective unless and until such contract or arrangement shall have received the approval of the commission. It shall be the duty of every public service company to file with the commission, a verified copy or a verified summary of any such unwritten contract or arrangement, and also of all such contracts and arrangements, whether written or unwritten, entered into prior to March 18, 1933 and in force and effect at that time. The commission shall approve such contract or arrangement hereafter made or entered into only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest; otherwise the contract or arrangement shall not be approved). The filing must be made prior to the effective date of the contract or arrangement. Modifications or amendments to the contracts or arrangements with affiliated interests must be filed with the commission prior to the effective date of the modification or amendment. The commission may at any time after receipt of the contract or arrangement institute an investigation and disapprove the contract, arrangement, or amendment thereto if the commission finds the public service company has failed to prove that it is reasonable and consistent with the public interest. The commission (shall not be required to approve) may disapprove any such contract or arrangement (unless) if satisfactory proof is not submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service described (herein) in this section.~~

Sec. 7. RCW 81.16.030 and 1961 c 14 s 81.16.030 are each amended to read as follows:

In any proceeding, whether upon the commission's own motion or upon complaint, involving the rates or practices of any public service company, the commission may exclude from the accounts of ~~((such))~~ the public service company any payment or compensation to an affiliated interest for any services rendered or property or service furnished, as ~~((above))~~ described in this section, under existing contracts or arrangements with ~~((such))~~ the affiliated interest unless ~~((such))~~ the public service company ~~((shall))~~ establishes the reasonableness of ~~((such))~~ the payment or compensation. In ~~((such))~~ the proceeding the commission shall disallow ~~((such))~~ the payment or compensation, in whole or in part, in the absence of satisfactory proof that it is reasonable in amount. In such a proceeding, any payment or compensation may be disapproved or disallowed by the commission, in whole or in part, ~~((unless))~~ if satisfactory proof is not submitted to the commission of the cost to the affiliated interest of rendering the service or furnishing the property or service ~~((above))~~ described in this section.

**Sec. 8.** RCW 81.16.050 and 1961 c 14 s 81.16.050 are each amended to read as follows:

The commission shall have continuing supervisory control over the terms and conditions of such contracts and arrangements as are herein described so far as necessary to protect and promote the public interest. The commission shall have the same jurisdiction over the modifications or amendment of contracts or arrangements as are herein described as it has over such original contracts or arrangements. The fact that a contract or arrangement has been filed with, or the commission ~~((shall have))~~ has approved entry into such contracts or arrangements, as described herein, shall not preclude disallowance or disapproval of payments made pursuant thereto, if upon actual experience under such contract or arrangement, it appears that the payments provided for or made were or are unreasonable. Every order of the commission approving any such contract or arrangement shall be expressly conditioned upon the reserved power of the commission to revise and amend the terms and conditions thereof, if, when and as necessary to protect and promote the public interest.

**Sec. 9.** RCW 81.16.060 and 1961 c 14 s 81.16.060 are each amended to read as follows:

Whenever the commission shall find upon investigation that any public service company is giving effect to any such contract or arrangement without such contract or arrangement having ~~((received the commission's approval))~~ been filed or approved, the commission may issue a summary order prohibiting the public service company from treating any payments made under the terms of such contract or arrangement as operating expenses or as capital expenditures for rate or valuation purposes, unless and until such contract or arrangement has been filed with the commission or until payments ~~((shall))~~ have received the approval of the commission.

**Sec. 10.** RCW 81.16.070 and 1961 c 14 s 81.16.070 are each amended to read as follows:



Whenever the commission (~~shall~~) finds upon investigation that any public service company is making payments to an affiliated interest, although (~~such~~) the payments have been disallowed (~~and~~) or disapproved by the commission in a proceeding involving the public service company's rates or practices, the commission shall issue a summary order directing the public service company (~~from treating such~~) to not treat the payments as operating expenses or capital expenditures for rate or valuation purposes, unless and until (~~such~~) the payments (~~shall~~) have received the approval of the commission.

Passed the House February 10, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 18, 1998.

Filed in Office of Secretary of State March 18, 1998.

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## CHAPTER 48

[House Bill 2779]

### WASHINGTON ECONOMIC DEVELOPMENT FINANCE AUTHORITY— DEBT LIMIT INCREASE

AN ACT Relating to the Washington economic development finance authority; and amending RCW 43.163.130 and 43.163.210.

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

**Sec. 1.** RCW 43.163.130 and 1994 c 238 s 5 are each amended to read as follows:

(1) The authority may issue its nonrecourse revenue bonds in order to obtain the funds to carry out the programs authorized in this chapter. The bonds shall be special obligations of the authority, payable solely out of the special fund or funds established by the authority for their repayment.

(2) Any bonds issued under this chapter may be secured by a financing document between the authority and the purchasers or owners of such bonds or between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state.

(a) The financing document may pledge or assign, in whole or in part, the revenues and funds held or to be received by the authority, any present or future contract or other rights to receive the same, and the proceeds thereof.

(b) The financing document may contain such provisions for protecting and enforcing the rights, security, and remedies of bondowners as may be reasonable and proper, including, without limiting the generality of the foregoing, provisions defining defaults and providing for remedies in the event of default which may include the acceleration of maturities, restrictions on the individual rights of action by bondowners, and covenants setting forth duties of and limitations on the authority in conduct of its programs and the management of its property.

(c) In addition to other security provided in this chapter or otherwise by law, bonds issued by the authority may be secured, in whole or in part, by financial guaranties, by insurance or by letters of credit issued to the authority or a trustee

or any other person, by any bank, trust company, insurance or surety company or other financial institution, within or without the state. The authority may pledge or assign, in whole or in part, the revenues and funds held or to be received by the authority, any present or future contract or other rights to receive the same, and the proceeds thereof, as security for such guaranties or insurance or for the reimbursement by the authority to any issuer of such letter of credit of any payments made under such letter of credit.

(3) Without limiting the powers of the authority contained in this chapter, in connection with each issue of its obligation bonds, the authority shall create and establish one or more special funds, including, but not limited to debt service and sinking funds, reserve funds, project funds, and such other special funds as the authority deems necessary, useful, or convenient.

(4) Any security interest created against the unexpended bond proceeds and against the special funds created by the authority shall be immediately valid and binding against the money and any securities in which the money may be invested without authority or trustee possession. The security interest shall be prior to any party having any competing claim against the moneys or securities, without filing or recording under Article 9 of the Uniform Commercial Code, Title 62A RCW, and regardless of whether the party has notice of the security interest.

(5) The bonds may be issued as serial bonds, term bonds or any other type of bond instrument consistent with the provisions of this chapter. The bonds shall bear such date or dates; mature at such time or times; bear interest at such rate or rates, either fixed or variable; be payable at such time or times; be in such denominations; be in such form; bear such privileges of transferability, exchangeability, and interchangeability; be subject to such terms of redemption; and be sold at public or private sale, in such manner, at such time or times, and at such price or prices as the authority shall determine. The bonds shall be executed by the manual or facsimile signatures of the authority's chair and either its secretary or executive director, and may be authenticated by the trustee (if the authority determines to use a trustee) or any registrar which may be designated for the bonds by the authority.

(6) Bonds may be issued by the authority to refund other outstanding authority bonds, at or prior to maturity of, and to pay any redemption premium on, the outstanding bonds. Bonds issued for refunding purposes may be combined with bonds issued for the financing or refinancing of new projects. Pending the application of the proceeds of the refunding bonds to the redemption of the bonds to be redeemed, the authority may enter into an agreement or agreements with a corporate trustee regarding the interim investment of the proceeds and the application of the proceeds and the earnings on the proceeds to the payment of the principal of and interest on, and the redemption of, the bonds to be redeemed.

(7) The bonds of the authority may be negotiable instruments under Title 62A RCW.

(8) Neither the members of the authority, nor its employees or agents, nor any person executing the bonds shall be personally liable on the bonds or be

subject to any personal liability or accountability by reason of the issuance of the bonds.

(9) The authority may purchase its bonds with any of its funds available for the purchase. The authority may hold, pledge, cancel or resell the bonds subject to and in accordance with agreements with bondowners.

(10) The authority shall not exceed ~~((two hundred fifty))~~ five hundred million dollars in total outstanding debt at any time.

(11) The state finance committee shall be notified in advance of the issuance of bonds by the authority in order to promote the orderly offering of obligations in the financial markets.

(12) The authority may not issue any bonds after June 30, ~~((2000))~~ 2004.

See. 2. RCW 43.163.210 and 1997 c 257 s 2 are each amended to read as follows:

For the purpose of facilitating economic development in the state of Washington and encouraging the employment of Washington workers at meaningful wages:

(1) The authority may develop and conduct a program or programs to provide nonrecourse revenue bond financing for the project costs for economic development activities.

(2) The authority may develop and conduct a program that will stimulate and encourage the development of new products within Washington state by the infusion of financial aid for invention and innovation in situations in which the financial aid would not otherwise be reasonably available from commercial sources. The authority is authorized to provide nonrecourse revenue bond financing for this program.

(a) For the purposes of this program, the authority shall have the following powers and duties:

(i) To enter into financing agreements with eligible persons doing business in Washington state, upon terms and on conditions consistent with the purposes of this chapter, for the advancement of financial and other assistance to the persons for the development of specific products, procedures, and techniques, to be developed and produced in this state, and to condition the agreements upon contractual assurances that the benefits of increasing or maintaining employment and tax revenues shall remain in this state and accrue to it;

(ii) Own, possess, and take license in patents, copyrights, and proprietary processes and negotiate and enter into contracts and establish charges for the use of the patents, copyrights, and proprietary processes when the patents and licenses for products result from assistance provided by the authority;

(iii) Negotiate royalty payments to the authority on patents and licenses for products arising as a result of assistance provided by the authority;

(iv) Negotiate and enter into other types of contracts with eligible persons that assure that public benefits will result from the provision of services by the authority; provided that the contracts are consistent with the state Constitution;

(v) Encourage and provide technical assistance to eligible persons in the process of developing new products;

(vi) Refer eligible persons to researchers or laboratories for the purpose of testing and evaluating new products, processes, or innovations; and

(vii) To the extent permitted under its contract with eligible persons, to consent to a termination, modification, forgiveness, or other change of a term of a contractual right, payment, royalty, contract, or agreement of any kind to which the authority is a party.

(b) Eligible persons seeking financial and other assistance under this program shall forward an application, together with an application fee prescribed by rule, to the authority. An investigation and report concerning the advisability of approving an application for assistance shall be completed by the staff of the authority. The investigation and report may include, but is not limited to, facts about the company under consideration as its history, wage standards, job opportunities, stability of employment, past and present financial condition and structure, pro forma income statements, present and future markets and prospects, integrity of management as well as the feasibility of the proposed product and invention to be granted financial aid, including the state of development of the product as well as the likelihood of its commercial feasibility. After receipt and consideration of the report set out in this subsection and after other action as is deemed appropriate, the application shall be approved or denied by the authority. The applicant shall be promptly notified of action by the authority. In making the decision as to approval or denial of an application, priority shall be given to those persons operating or planning to operate businesses of special importance to Washington's economy, including, but not limited to: (i) Existing resource-based industries of agriculture, forestry, and fisheries; (ii) existing advanced technology industries of electronics, computer and instrument manufacturing, computer software, and information and design; and (iii) emerging industries such as environmental technology, biotechnology, biomedical sciences, materials sciences, and optics.

(3) The authority may also develop and implement, if authorized by the legislature, such other economic development financing programs adopted in future general plans of economic development finance objectives developed under RCW 43.163.090.

(4) The authority may not issue any bonds for the programs authorized under this section after June 30, ~~((2000))~~ 2004.

Passed the House February 11, 1998.

Passed the Senate March 5, 1998.

Approved by the Governor March 18, 1998.

Filed in Office of Secretary of State March 18, 1998.

**CHAPTER 49**

[House Bill 2784]

**PROVISION OF WATER BY PUBLIC UTILITY DISTRICTS—CLARIFICATIONS**

AN ACT Relating to safe public water supply; and amending RCW 54.16.030.

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

**Sec. 1.** RCW 54.16.030 and 1955 c 390 s 4 are each amended to read as follows:

A district may construct, purchase, condemn and purchase, acquire, add to, maintain, conduct, and operate water works and irrigation plants and systems, within or without its limits, for the purpose of furnishing the district, and the inhabitants ((thereof)) of the county in which the district is located, and any other persons including public and private corporations within or without its limits, with an ample supply of water for all purposes, public and private, including water power, domestic use, and irrigation, with full and exclusive authority to sell and regulate and control the use, distribution, and price thereof.

Passed the House February 10, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 18, 1998.

Filed in Office of Secretary of State March 18, 1998.

**CHAPTER 50**

[House Bill 2797]

**NATURAL HERITAGE ADVISORY COUNCIL—INCREASING PUBLIC PARTICIPATION**

AN ACT Relating to increasing public participation in the establishment of natural area preserves; amending RCW 79.70.070; and adding a new section to chapter 79.70 RCW.

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

**Sec. 1.** RCW 79.70.070 and 1994 c 264 s 62 are each amended to read as follows:

(1) The natural heritage advisory council is hereby established. The council shall consist of fifteen members, ((~~nine~~)) ten of whom shall be chosen as follows and who shall elect from the council's membership a chairperson:

(a) Five individuals, appointed by the commissioner, who shall be recognized experts in the ecology of natural areas and represent the public, academic, and private sectors. Desirable fields of expertise are biological and geological sciences; and

(b) ((~~Four~~)) Five individuals, appointed by the commissioner, who shall be selected from the various regions of the state. At least one member shall be or represent a private forest landowner and at least one member shall be or represent a private agricultural landowner.

(2) Members appointed under subsection (1) of this section shall serve for terms of four years.

(3) In addition to the members appointed by the commissioner, the director of the department of fish and wildlife, the director of the department of ecology, the supervisor of the department of natural resources, the director of the state parks and recreation commission, and the administrator of the interagency committee for outdoor recreation, or an authorized representative of each agency officer, shall serve as ex officio, nonvoting members of the council.

(4) Any vacancy on the council shall be filled by appointment for the unexpired term by the commissioner.

(5) In order to provide for staggered terms, of the initial members of the council:

- (a) Three shall serve for a term of two years;
- (b) Three shall serve for a term of three years; and
- (c) Three shall serve for a term of four years.

(6) Members of the natural preserves advisory committee serving on July 26, 1981, shall serve as members of the council until the commissioner appoints a successor to each. The successor appointment shall be specifically designated to replace a member of the natural preserves advisory committee until all members of that committee have been replaced. A member of the natural preserves advisory committee is eligible for appointment to the council if otherwise qualified.

(7) Members of the council shall serve without compensation. Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 as now or hereafter amended.

**NEW SECTION.** Sec. 2. A new section is added to chapter 79.70 RCW to read as follows:

The department shall hold a public hearing in the county where the majority of the land in a proposed natural area preserve is located prior to establishing the boundary.

Passed the House February 10, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 18, 1998.

Filed in Office of Secretary of State March 18, 1998.

## CHAPTER 51

[House Bill 2837]

### BENEFITING WILDLIFE AND DEVELOPING AIR TRANSPORTATION FACILITIES ON PROPERTY NO LONGER USED FOR FISH HATCHERIES

AN ACT Relating to improving wildlife resources and air transportation; creating a new section; and declaring an emergency.

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

**NEW SECTION.** Sec. 1. The legislature finds that the department of fish and wildlife manages property in the state where the department has abandoned use of the property for fish hatchery operations and where the location of the

property impedes further development of air transportation facilities. The department shall identify all such properties in the state and shall immediately begin to work with local governments in the same counties in which the properties are located to explore land exchanges to benefit the state's wildlife resources and to facilitate improved air transportation.

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

Passed the House February 11, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 18, 1998.

Filed in Office of Secretary of State March 18, 1998.

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## CHAPTER 52

[House Bill 2907]

### SMALL CLAIMS COURT APPEALS—PROCEDURES

AN ACT Relating to small claims courts; and amending RCW 12.36.020, 12.36.030, 12.36.050, 12.36.080, 12.40.105, and 12.40.110.

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

**Sec. 1.** RCW 12.36.020 and 1997 c 352 s 8 are each amended to read as follows:

(1) To appeal a judgment or decision in a small claims action, an appellant shall file a notice of appeal in the district court, pay the statutory superior court filing fee, post the required bond or undertaking, and serve a copy of the notice of appeal on all parties of record within thirty days after the judgment is rendered or decision made.

(2) No appeal may be allowed, nor proceedings on the judgment or decision stayed, unless a bond or undertaking shall be executed on the part of the appellant and filed with and approved by the district court. The bond or undertaking shall be executed with two or more personal sureties, or a surety company as surety, to be approved by the district court, in a sum equal to twice the amount of the judgment and costs, or twice the amount in controversy, whichever is greater, conditioned that the appellant will pay any judgment, including costs, as may be rendered on appeal. No bond is required if the appellant is a county, city, town, or school district.

(3) When an appellant has filed a notice of appeal, paid the statutory superior court filing fee and the costs of preparation of the complete record as set forth in RCW 3.62.060(7), and posted the bond or undertaking as required, the clerk of the district court shall immediately file a copy of the notice of appeal, the filing fee, and the bond or undertaking with the superior court.

**Sec. 2.** RCW 12.36.030 and 1997 c 352 s 9 are each amended to read as follows:

When an appeal and any necessary bond or undertaking are properly filed ~~((in the district court, and the appeal filed))~~ in superior court pursuant to RCW ~~((12.36.010))~~ 12.36.020(3), the appellant may move in superior court to stay all further proceedings in the district court. If the stay is granted, ~~((the district court shall order that))~~ all further proceedings in district court on the judgment shall be suspended. If proceedings have commenced on motion of the appellant the ~~((district))~~ court may order the proceedings halted and such process recalled.

If any property is held pursuant to such proceedings at the time the stay is granted and the process recalled, such property shall be returned immediately to the party entitled to such property.

If the requested stay is denied, or no stay is requested, the judgment will be enforced in superior court in the same manner as any other judgment rendered in that court.

Sec. 3. RCW 12.36.050 and 1997 c 352 s 10 are each amended to read as follows:

(1) Within fourteen days after a small claims appeal has been filed in superior court by the clerk of the district court pursuant to RCW 12.36.020(3), the ~~((appellant shall file with the clerk of the district court, and serve on all parties, a designation of that portion of the complete record which the appellant wishes to have transmitted to superior court. The designation may be supplemented by any party within fourteen days of such filing))~~ complete record as defined in subsection (2) of this section shall be made and certified by the clerk of the district court to be correct. The clerk shall then immediately transmit the complete record to superior court. The superior court shall then become possessed of the cause. All further proceedings shall be in the superior court, including enforcement of any judgment rendered. Any mandatory superior court procedures such as arbitration or other dispute resolution will apply as if the cause was originally filed in superior court. The statute governing the trial de novo shall only apply to those cases set for trial after compliance with superior court procedures.

(2) The complete record shall consist of a transcript of all entries made in the district court docket relating to the case, together with all the process and other papers relating to the case filed with the district court and any contemporaneous recording made of the proceeding.

~~((3) The record as designated shall be made and certified by the clerk of the district court to be correct. The clerk shall notify all parties designating portions of the record that the designated record is complete, and the amount to be paid for preparation of that portion of the record requested by each party. Payment of such costs by each party for preparation of that portion of the record they designate must be made within ten days of such notice from the clerk. Upon payment of such costs, the designated record shall be transmitted to the superior court. By such transmittal the superior court shall become possessed of the cause.))~~



Sec. 4. RCW 12.36.080 and 1997 c 352 s 12 are each amended to read as follows:

No appeal under this chapter shall be dismissed on account of any defect in the bond on appeal, if, within ten days of notice to appellant of such defect, the appellant executes and files in the ~~((district))~~ court currently possessed of the cause such bond as should have been executed at the time of taking the appeal, and pay all costs that may have accrued by reason of such defect.

Sec. 5. RCW 12.40.105 and 1995 c 292 s 5 are each amended to read as follows:

If the losing party fails to pay the judgment within ~~((twenty))~~ thirty days or within the period otherwise ordered by the court, the judgment shall be increased by: (1) An amount sufficient to cover costs of certification of the judgment under RCW 12.40.110; and (2) the amount specified in RCW 36.18.012(2), without regard to the jurisdictional limits on the small claims department.

Sec. 6. RCW 12.40.110 and 1995 c 292 s 6 are each amended to read as follows:

(1) If the losing party fails to pay the judgment according to the terms and conditions thereof within ~~((twenty))~~ thirty days or is in arrears on any payment plan, and the prevailing party so notifies the court, the ~~((judge before whom such hearing was had))~~ court shall certify the judgment in substantially the following form:

Washington.

In the District Court of . . . . . County.

..... Plaintiff,

vs.

..... Defendant.

In the Small Claims Department.

This is to certify that: (1) In a certain action ~~((before me, the undersigned, had))~~ on ~~((this))~~ the . . . . day of . . . . . 19. . . , wherein . . . . . was plaintiff and . . . . . defendant, jurisdiction of said defendant having been had by personal service (or otherwise) as provided by law, ~~((I then and there entered))~~ judgment was entered against . . . . . in the sum of . . . . . Dollars; (2) the judgment has not been paid within twenty days or the period otherwise ordered by the court; and (3) pursuant to RCW 12.40.105, the amount of the judgment is hereby increased by any costs of certification under this section and the amount specified in RCW 36.18.012(2).

Witness my hand this . . . . day of . . . . ., 19. . .

.....  
~~((District Judge sitting in the))~~

Clerk of the Small Claims Department.

(2) The ~~((judge))~~ clerk shall forthwith enter the judgment transcript on the judgment docket of the district court; and thereafter garnishment, execution, and

other process on execution provided by law may issue thereon, as in other judgments of district courts.

(3) Transcripts of such judgments may be filed and entered in judgment lien dockets in superior courts with like effect as in other cases.

Passed the House February 10, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 18, 1998.

Filed in Office of Secretary of State March 18, 1998.

## CHAPTER 53

[Substitute House Bill 2973]

### LIQUOR CONTROL BOARD—POWERS REGARDING THE SEIZURE AND FORFEITURE OF CIGARETTES

AN ACT Relating to clarifying the role of the liquor control board to hear appeals relating to the seizure and forfeiture of cigarettes; amending RCW 82.24.135; and declaring an emergency.

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

**Sec. 1.** RCW 82.24.135 and 1987 c 496 s 3 are each amended to read as follows:

In all cases of seizure of any property made subject to forfeiture under this chapter the department or the board shall proceed as follows:

(1) Forfeiture shall be deemed to have commenced by the seizure. Notice of seizure shall be given to the department or the board immediately if the seizure is made by someone other than an agent of the department or the board authorized to collect taxes.

(2) Upon notification or seizure by the department or the board or upon receipt of property subject to forfeiture under this chapter from any other person, the department or the board shall list and particularly describe the property seized in duplicate and have the property appraised by a qualified person not employed by the department or the board or acting as its agent. Listing and appraisal of the property shall be properly attested by the department or the board and the appraiser, who shall be allowed a reasonable appraisal fee. No appraisal is required if the property seized is judged by the department or the board to be less than one hundred dollars in value.

(3) The department or the board shall cause notice to be served within five days following the seizure or notification to the department or the board of the seizure on the owner of the property seized, if known, on the person in charge thereof, and on any other person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by mail. If service is by mail it shall be by both certified mail with return receipt requested and regular mail. Service by mail shall be deemed complete upon mailing within the five-day period following the seizure or notification of the seizure to the department or the board.

(4) If no person notifies the department or the board in writing of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the item seized shall be considered forfeited.

(5) If any person notifies the department or the board, in writing, of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the director or the director's designee or the board or the board's designee, except that any person asserting a claim or right may bring an action for return of the seized items in the superior court of the county in which such property was seized, if the aggregate value of the article or articles involved is more than five hundred dollars. A hearing (~~before the seizing agency~~) and any appeal therefrom shall be in accordance with chapter 34.05 RCW. The burden of proof by a preponderance of the evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the items seized. The department or the board shall promptly return the article or articles to the claimant upon a determination that the claimant is the present lawful owner or is lawfully entitled to possession thereof of the items seized.

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

Passed the House February 13, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 18, 1998.

Filed in Office of Secretary of State March 18, 1998.

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## CHAPTER 54

[Senate Bill 6223]

### BOARD OF TAX APPEALS—FILINGS, NOTICE

AN ACT Relating to filing with the state tax board; and amending RCW 82.03.130, 82.03.190, and 84.08.130.

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

Sec. 1. RCW 82.03.130 and 1994 c 123 s 3 are each amended to read as follows:

(1) The board shall have jurisdiction to decide the following types of appeals:

~~((1))~~ (a) Appeals taken pursuant to RCW 82.03.190.

~~((2))~~ (b) Appeals from a county board of equalization pursuant to RCW 84.08.130.

~~((3))~~ (c) Appeals by an assessor or landowner from an order of the director of revenue made pursuant to RCW 84.08.010 and 84.08.060, if filed with the

board of tax appeals within thirty days after the mailing of the order, the right to such an appeal being hereby established.

~~((4))~~ (d) Appeals by an assessor or owner of an intercounty public utility or private car company from determinations by the director of revenue of equalized assessed valuation of property and the apportionment thereof to a county made pursuant to chapter 84.12 and 84.16 RCW, if filed with the board of tax appeals within thirty days after mailing of the determination, the right to such appeal being hereby established.

~~((5))~~ (e) Appeals by an assessor, landowner, or owner of an intercounty public utility or private car company from a determination of any county indicated ratio for such county compiled by the department of revenue pursuant to RCW 84.48.075: PROVIDED, That

~~((a))~~ (i) Said appeal be filed after review of the ratio under RCW 84.48.075(3) and not later than fifteen days after the mailing of the certification; and

~~((b))~~ (ii) The hearing before the board shall be expeditiously held in accordance with rules prescribed by the board and shall take precedence over all matters of the same character.

~~((6))~~ (f) Appeals from the decisions of sale price of second class shorelands on navigable lakes by the department of natural resources pursuant to RCW 79.94.210.

~~((7))~~ (g) Appeals from urban redevelopment property tax apportionment district proposals established by governmental ordinances pursuant to RCW 39.88.060.

~~((8))~~ (h) Appeals from interest rates as determined by the department of revenue for use in valuing farmland under current use assessment pursuant to RCW 84.34.065.

~~((9))~~ (i) Appeals from revisions to stumpage value tables used to determine value by the department of revenue pursuant to RCW 84.33.091.

~~((10))~~ (j) Appeals from denial of tax exemption application by the department of revenue pursuant to RCW 84.36.850.

~~((11))~~ (k) Appeals pursuant to RCW 84.40.038(3).

(2) Except as otherwise specifically provided by law hereafter, the provisions of RCW 1.12.070 shall apply to all notices of appeal filed with the board of tax appeals.

**Sec. 2.** RCW 82.03.190 and 1989 c 378 s 5 are each amended to read as follows:

Any person having received notice of a denial of a petition or a notice of determination made under RCW 82.32.160, 82.32.170, 82.34.110, or 82.49.060 may appeal ~~(;)~~ by filing in accordance with RCW 1.12.070 a notice of appeal with the board of tax appeals within thirty days after the mailing of the notice of such denial or determination ~~(; to the board of tax appeals)~~. In the notice of appeal the taxpayer shall set forth the amount of the tax which the taxpayer contends should be reduced or refunded and the reasons for such reduction or

refund, in accordance with rules of practice and procedure prescribed by the board. ~~((A copy of the notice of appeal shall be provided to the department within the time specified in the rules of practice and procedure prescribed by the board.))~~ However, if the notice of appeal relates to an application made to the department under chapter 82.34 RCW, the taxpayer shall set forth the amount to which the taxpayer claims the credit or exemption should apply, and the grounds for such contention, in accordance with rules of practice and procedure prescribed by the board. The board shall transmit a copy of the notice of appeal to the department and all other named parties within thirty days of its receipt by the board. If the taxpayer intends that the hearing before the board be held pursuant to the administrative procedure act (chapter 34.05 RCW), the notice of appeal shall also so state. In the event that the notice of appeal does not so state, the department may, within thirty days from the date of its receipt of the notice of appeal, file with the board notice of its intention that the hearing be held pursuant to the administrative procedure act.

**Sec. 3.** RCW 84.08.130 and 1994 c 301 s 18 are each amended to read as follows:

(1) Any taxpayer or taxing unit feeling aggrieved by the action of any county board of equalization may appeal to the board of tax appeals by filing with the board of tax appeals in accordance with RCW 1.12.070 a notice of appeal within thirty days after the mailing of the decision of such board of equalization, which notice shall specify the actions complained of; and in like manner any county assessor may appeal to the board of tax appeals from any action of any county board of equalization. There shall be no fee charged for the filing of an appeal. ~~((The petitioner shall serve a copy of the notice of appeal on all named parties within the same thirty-day time period.))~~ The board shall transmit a copy of the notice of appeal to all named parties within thirty days of its receipt by the board. Appeals which are not filed ~~((and served))~~ as provided in this section shall be dismissed. The board of tax appeals shall require the board appealed from to file a true and correct copy of its decision in such action and all evidence taken in connection therewith, and may receive further evidence, and shall make such order as in its judgment is just and proper. ~~((An appeal of an action by a county board of equalization shall be deemed to have been filed and served within the thirty-day period if it is postmarked on or before the thirtieth day after the mailing of the decision of the board of equalization.))~~

(2) The board of tax appeals may enter an order, pursuant to subsection (1) of this section, that has effect up to the end of the assessment cycle used by the assessor, if there has been no intervening change in the value during that time.

Passed the Senate February 12, 1998.

Passed the House March 3, 1998.

Approved by the Governor March 18, 1998.

Filed in Office of Secretary of State March 18, 1998.

## CHAPTER 55

[Substitute Senate Bill 6258]

## TECHNICAL CORRECTIONS TO THE REVISED CODE OF WASHINGTON

AN ACT Relating to making technical corrections to the Revised Code of Washington; amending RCW 9A.40.060, 10.99.045, 42.17.160, 43.160.076, and 82.14.370; reenacting and amending RCW 43.160.210; providing an effective date; and providing an expiration date.

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

Sec. 1. RCW 9A.40.060 and 1994 c 162 s 1 are each amended to read as follows:

(1) A relative of a child under the age of eighteen or of an incompetent person is guilty of custodial interference in the first degree if, with the intent to deny access to the child or incompetent person by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person, the relative takes, entices, retains, detains, or conceals the child or incompetent person from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person and:

(a) Intends to hold the child or incompetent person permanently or for a protracted period; or

(b) Exposes the child or incompetent person to a substantial risk of illness or physical injury; or

(c) Causes the child or incompetent person to be removed from the state of usual residence; or

(d) Retains, detains, or conceals the child or incompetent person in another state after expiration of any authorized visitation period with intent to intimidate or harass a parent, guardian, institution, agency, or other person having lawful right to physical custody or to prevent a parent, guardian, institution, agency, or other person with lawful right to physical custody from regaining custody.

(2) A parent of a child is guilty of custodial interference in the first degree if the parent takes, entices, retains, detains, or conceals the child, with the intent to deny access, from the other parent having the lawful right to time with the child pursuant to a court-ordered parenting plan, and:

(a) Intends to hold the child permanently or for a protracted period; or

(b) Exposes the child to a substantial risk ~~((or-of))~~ of illness or physical injury; or

(c) Causes the child to be removed from the state of usual residence.

(3) A parent or other person acting under the directions of the parent is guilty of custodial interference in the first degree if the parent or other person intentionally takes, entices, retains, or conceals a child, under the age of eighteen years and for whom no lawful custody order or parenting plan has been entered by a court of competent jurisdiction, from the other parent with intent to deprive the other parent from access to the child permanently or for a protracted period.

(4) Custodial interference in the first degree is a class C felony.

## EXPLANATORY NOTE:

This bill changes the word "or" to "of," correcting an error made in 1994 c 162 s 1, which was intended to have the language in subsection (2)(b) parallel the language in subsection (1)(b).

**Sec. 2.** RCW 10.99.045 and 1994 sp.s. c 7 s 450 are each amended to read as follows:

(1) A defendant arrested for an offense involving domestic violence as defined by RCW 10.99.020(~~((2))~~) shall be required to appear in person before a magistrate within one judicial day after the arrest.

(2) A defendant who is charged by citation, complaint, or information with an offense involving domestic violence as defined by RCW 10.99.020(~~((2))~~) and not arrested shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information.

(3) At the time of the appearances provided in subsection (1) or (2) of this section, the court shall determine the necessity of imposing a no-contact order or other conditions of pretrial release according to the procedures established by court rule for a preliminary appearance or an arraignment. The court may include in the order any conditions authorized under RCW 9.41.800.

(4) Appearances required pursuant to this section are mandatory and cannot be waived.

(5) The no-contact order shall be issued and entered with the appropriate law enforcement agency pursuant to the procedures outlined in RCW 10.99.040 (2) and (4).

## EXPLANATORY NOTE:

RCW 10.99.020 was amended by 1995 c 246 s 21, changing subsection (2) to subsection (3), but 1995 c 246 failed to make the corresponding cross-reference change required in RCW 10.99.045. This bill corrects the cross-reference by deleting the reference to the specific subsection. Since "domestic violence" is defined in RCW 10.99.020 regardless of which subsection number the definition is in, this allows subsequent amendments to RCW 10.99.020 without requiring clean-ups to RCW 10.99.045.

**Sec. 3.** RCW 42.17.160 and 1995 c 397 s 32 are each amended to read as follows:

The following persons and activities shall be exempt from registration and reporting under RCW 42.17.150, 42.17.170, and 42.17.200:

(1) Persons who limit their lobbying activities to appearing before public sessions of committees of the legislature, or public hearings of state agencies;

(2) Activities by lobbyists or other persons whose participation has been solicited by an agency under RCW 34.05.310(2);

(3) News or feature reporting activities and editorial comment by working members of the press, radio, or television and the publication or dissemination thereof by a newspaper, book publisher, regularly published periodical, radio station, or television station;

(4) Persons who lobby without compensation or other consideration for acting as a lobbyist: PROVIDED, Such person makes no expenditure for or on behalf of any member of the legislature or elected official or public officer or employee of the state of Washington in connection with such lobbying. The exemption contained in this subsection is intended to permit and encourage citizens of this state to lobby any legislator, public official, or state agency without incurring any registration or reporting obligation provided they do not exceed the limits stated above. Any person exempt under this subsection (4) may at his or her option register and report under this chapter;

(5) Persons who restrict their lobbying activities to no more than four days or parts thereof during any three-month period and whose total expenditures during such three-month period for or on behalf of any one or more members of the legislature or state elected officials or public officers or employees of the state of Washington in connection with such lobbying do not exceed twenty-five dollars: PROVIDED, That the commission shall promulgate regulations to require disclosure by persons exempt under this subsection or their employers or entities which sponsor or coordinate the lobbying activities of such persons if it determines that such regulations are necessary to prevent frustration of the purposes of this chapter. Any person exempt under this subsection (5) may at his or her option register and report under this chapter;

(6) The governor;

(7) The lieutenant governor;

(8) Except as provided by RCW 42.17.190(1), members of the legislature;

(9) Except as provided by RCW 42.17.190(1), persons employed by the legislature for the purpose of aiding in the preparation or enactment of legislation or the performance of legislative duties;

(10) Elected officials, and officers and employees of any agency reporting under RCW 42.17.190(~~(4) as now or hereafter amended~~)(5).

**EXPLANATORY NOTE:**

RCW 42.17.190 was amended by 1986 c 239 s I, changing subsection (4) to subsection (5). The current subsection (5) is the subsection that requires reporting of lobbying by state agencies. This bill corrects the cross-reference to that subsection.

**Sec. 4.** RCW 43.160.076 and 1997 c 367 s 9 are each amended to read as follows:

(1) Except as authorized to the contrary under subsection (2) of this section, from all funds available to the board for financial assistance in a biennium, the board shall spend at least seventy-five percent for financial assistance for projects in distressed counties or rural natural resources impact areas. For purposes of this



section, the term "distressed counties" includes any county, in which the average level of unemployment for the three years before the year in which an application for financial assistance is filed, exceeds the average state ((~~employment~~) unemployment) for those years by twenty percent.

(2) If at any time during the last six months of a biennium the board finds that the actual and anticipated applications for qualified projects in distressed counties or rural natural resources impact areas are clearly insufficient to use up the seventy-five percent allocation, then the board shall estimate the amount of the insufficiency and during the remainder of the biennium may use that amount of the allocation for financial assistance to projects not located in distressed counties or rural natural resources impact areas.

(3) This section expires June 30, 2000.

#### EXPLANATORY NOTE:

The formula for determining the threshold unemployment level for the definition of "distressed counties" was erroneously copied for use in 1985 chapter 446 section 6. This bill changes the word "employment" to the correct word in the formula, "unemployment."

This bill also corrects drafting errors in the delayed repeal of RCW 43.160.076. Although the delayed repeal of RCW 43.160.076 has been amended several times, most recently in 1997 c 367 s 10 that changed the date of the section's repeal to June 30, 2000, these amendments have not included in the repeal's list of affected laws any session laws after 1991. The new subsection (3) in this bill expires the entire section June 30, 2000. This means that all session laws that affect the section, including any amending this section in the future, are now included in the expiration.

**Sec. 5.** RCW 43.160.210 and 1996 c 290 s 1 and 1996 c 51 s 10 are each reenacted and amended to read as follows:

(1) Except as authorized to the contrary under subsection (2) of this section, from all funds available to the board for financial assistance, the board shall designate at least twenty percent for financial assistance for projects in distressed counties. For purposes of this section, the term "distressed counties" includes any county, in which: (a) The average level of unemployment for the three years before the year in which an application for financial assistance is filed, exceeds the average state ((~~employment~~) unemployment) for those years by twenty percent; or (b) a county that has a median household income that is less than seventy-five percent of the state median household income for the previous three years.

(2) If at any time during the last six months of a biennium the board finds that the actual and anticipated applications for qualified projects in distressed counties are clearly insufficient to use up the twenty percent allocation, then the board shall estimate the amount of the insufficiency and during the remainder of the biennium may use that amount of the allocation for financial assistance for projects not located in distressed counties.

## EXPLANATORY NOTE:

The formula for determining the threshold unemployment level for the definition of "distressed counties" was erroneously copied for use in 1991 c 314 s 25. This bill changes the word "employment" to the correct word in the formula, "unemployment."

RCW 43.160.210 was also amended by 1996 c 51 s 10 and by 1996 c 290 s 1, each without reference to the other. Both amendments are incorporated and reenacted in this bill.

**Sec. 6.** RCW 82.14.370 and 1997 c 366 s 3 are each amended to read as follows:

(1) The legislative authority of a distressed county may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall not exceed 0.04 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue shall perform the collection of such taxes on behalf of the county at no cost to the county.

(3) Moneys collected under this section shall only be used for the purpose of financing public facilities in rural counties.

(4) No tax may be collected under this section before July 1, 1998. No tax may be collected under this section by a county more than twenty-five years after the date that a tax is first imposed under this section.

(5) For purposes of this section, "distressed county" means a county in which the average level of unemployment for the three years before the year in which a tax is first imposed under this section exceeds the average state ~~((employment))~~ unemployment for those years by twenty percent.

## EXPLANATORY NOTE:

The formula for determining the threshold unemployment level for the definition of "distressed county" was erroneously copied for use in 1997 c 366 s 3. This bill changes the word "employment" to the correct word in the formula, "unemployment."

NEW SECTION. **Sec. 7.** Section 5 of this act takes effect June 30, 2000.

## EXPLANATORY NOTE:

RCW 43.160.210, amended in section 5 of this act, has a delayed effective date of June 30, 2000. This section makes this bill consistent with that effective date.

Passed the Senate February 12, 1998.  
Passed the House March 3, 1998.  
Approved by the Governor March 18, 1998.  
Filed in Office of Secretary of State March 18, 1998.

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**CHAPTER 56**

[Senate Bill 6299]

**UNLAWFUL ISSUANCE OF CHECKS OR DRAFTS—VENUE**

AN ACT Relating to actions for unlawful issuance of a check or draft; and amending RCW 4.12.025.

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

**Sec. 1.** RCW 4.12.025 and 1985 c 68 s 2 are each amended to read as follows:

(1) An action may be brought in any county in which the defendant resides, or, if there be more than one defendant, where some one of the defendants resides at the time of the commencement of the action. For the purpose of this section, the residence of a corporation defendant shall be deemed to be in any county where the corporation: (a) Transacts business; (b) has an office for the transaction of business; (c) transacted business at the time the cause of action arose; or (d) where any person resides upon whom process may be served upon the corporation.

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

(3) The venue of any action brought against a corporation, at the option of the plaintiff, shall be: (a) In the county where the tort was committed; (b) in the county where the work was performed for said corporation; (c) in the county where the agreement entered into with the corporation was made; or (d) in the county where the corporation has its residence.

Passed the Senate February 10, 1998.  
Passed the House March 3, 1998.  
Approved by the Governor March 18, 1998.  
Filed in Office of Secretary of State March 18, 1998.

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**CHAPTER 57**

[Engrossed Substitute Senate Bill 6323]

**LAW OF ADVERSE POSSESSION ON FOREST LAND—CLARIFICATIONS**

AN ACT Relating to adverse possession affecting forest land; and adding a new section to chapter 7.28 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 7.28 RCW to read as follows:

(1) In any action seeking to establish an adverse claimant as the legal owner of a fee or other interest in forest land based on a claim of adverse possession, and in any defense to an action brought by the holder of record title for recovery of title to or possession of a fee or other interest in forest land where such defense is based on a claim of adverse possession, the adverse claimant shall not be deemed to have established open and notorious possession of the forest lands at issue unless, as a minimum requirement, the adverse claimant establishes by clear and convincing evidence that the adverse claimant has made or erected substantial improvements, which improvements have remained entirely or partially on such lands for at least ten years. If the interests of justice so require, the making, erecting, and continuous presence of substantial improvements on the lands at issue, in the absence of additional acts by the adverse claimant, may be found insufficient to establish open and notorious possession.

(2) This section shall not apply to any adverse claimant who establishes by clear and convincing evidence that the adverse claimant occupied the lands at issue and made continuous use thereof for at least ten years in good faith reliance on location stakes or other boundary markers set by a registered land surveyor purporting to establish the boundaries of property to which the adverse claimant has record title.

(3) For purposes of this section:

(a) "Adverse claimant" means any person, other than the holder of record title, occupying the lands at issue together with any prior occupants of the land in privity with such person by purchase, devise, or descent;

(b) "Claim of adverse possession" does not include a claim asserted under RCW 7.28.050, 7.28.070, or 7.28.080;

(c) "Forest land" has the meaning given in RCW 84.33.100; and

(d) "Substantial improvement" means a permanent or semipermanent structure or enclosure for which the costs of construction exceeded fifty thousand dollars.

(4) This section shall not apply to any adverse claimant who, before the effective date of this act, acquired title to the lands in question by adverse possession under the law then in effect.

(5) This section shall not apply to any adverse claimant who seeks to assert a claim or defense of adverse possession in an action against any person who, at the time such action is commenced, owns less than twenty acres of forest land in the state of Washington.

Passed the Senate February 17, 1998.

Passed the House March 3, 1998.

Approved by the Governor March 18, 1998.

Filed in Office of Secretary of State March 18, 1998.

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## CHAPTER 58

[Senate Bill 6398]

## VOTING SYSTEM TESTS

AN ACT Relating to testing of voting systems; and amending RCW 29.33.145, 29.33.350, and 29.33.360.

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

Sec. 1. RCW 29.33.145 and 1990 c 59 s 23 are each amended to read as follows:

An agreement to purchase or lease a voting system or a component of a voting system is subject to that system or component passing an acceptance test (~~((prescribed by the secretary of state))~~) sufficient to demonstrate that the equipment is (~~((identical to))~~) the same as that certified by the secretary of state and that the equipment is operating correctly as delivered to the county.

Sec. 2. RCW 29.33.350 and 1990 c 59 s 32 are each amended to read as follows:

At least three days before each state primary or general election, the office of the secretary of state shall provide for the conduct of tests of the programming for each vote tallying system to be used at that primary or general election (~~((shall be tested by the office of the secretary of state to))~~). The test must verify that the system will correctly count the vote cast for all candidates and on all measures appearing on the ballot at that primary or general election. The (~~((tests shall be conducted by processing a preaudited group of ballots marked with a predetermined number of ballot votes for each candidate and for and against each measure. For each office for which there are two or more candidates and for each issue, the group of test ballots shall include one or more ballots which have votes in excess of the number allowed by law, in order to verify the ability of the vote tallying system to reject such votes))~~) office of the secretary of state shall adopt rules specifying the manner of conducting these programming tests. The test shall verify the capability of the vote tallying system to perform all of the functions that can reasonably be expected to occur during conduct of that particular primary or election. If any error is detected, the cause shall be determined and corrected, and an errorless total shall be produced before the primary or election.

Such tests shall be observed by at least one representative from each major political party, if representatives have been appointed by the respective major political parties and are present at the test, and shall be open to candidates, the press, and the public. The (~~((secretary of state, the))~~) county auditor(~~(;)~~) and any political party observers shall certify that the test has been conducted in accordance with this section. Copies of this certification shall be retained by the secretary of state and the county auditor. All programming materials, test results, and test ballots shall be securely sealed until the day of the primary or general election.

Sec. 3. RCW 29.33.360 and 1990 c 59 s 34 are each amended to read as follows:

The secretary of state (~~shall~~) may publish (~~(manuals of)~~) recommended procedures for the operation of the various vote tallying systems that have been approved. These (~~(manuals shall contain any applicable rules and statutes relating to the printing of ballots and preparation and testing of the various vote tallying systems, the duties and functions of the precinct election officers, and the duties and functions of the counting center personnel and operators of vote tallying systems at counting centers)~~) procedures allow the office of the secretary of state to restrict or define the use of approved systems in elections.

Passed the Senate February 12, 1998.

Passed the House March 3, 1998.

Approved by the Governor March 18, 1998.

Filed in Office of Secretary of State March 18, 1998.

## CHAPTER 59

[Substitute Senate Bill 6667]

### WASHINGTON GIFT OF LIFE MEDAL

AN ACT Relating to the Washington gift of life medal; and adding a new chapter to Title I RCW.

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

**NEW SECTION.** Sec. 1. The legislature finds that persons who donate organs help save the lives and promote the well-being of others in a manner that demonstrates the noblest side of human nature. Many families and friends of both the donors and the donees may want to remember the special act of donation in a way that honors the memory of the donor and encourages donation by others in the future.

To recognize the special kindness of those who donate their organs, the legislature establishes the Washington gift of life medal.

**NEW SECTION.** Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Organ donor" means an individual who makes an anatomical gift as specified in RCW 68.50.530(1).

(2) "Organ procurement organization" means any accredited or certified organ or eye bank.

(3) "Person" means a person specified in RCW 68.50.550.

**NEW SECTION.** Sec. 3. Application for the Washington gift of life medal shall be made as follows:

(1) Family members of an organ donor may apply to the governor's office to receive a Washington gift of life medal.

(2) An accredited or a federally certified organ procurement organization through which a person made an organ donation and requested a gift of life medal may apply to the governor's office on behalf of the person or family members.

**NEW SECTION.** Sec. 4. (1) The governor's office shall award a Washington gift of life medal to all eligible families or persons under the following conditions:

(a) The organ procurement organization shall determine whether the individual or person requesting the medal is eligible under this section to receive the medal described in section 5 of this act and shall submit documentation supporting the eligibility of the individual or person to the governor's office. If more than one organ procurement organization is involved, they shall coordinate in harmony to designate by consensus the organ procurement organization among them to have primary administrative responsibility under this chapter.

(b) The governor's office shall award the medal and direct the primary organ procurement organization to arrange for the presentation to a family or person who requested a medal under this section and who has been determined by the organ procurement organization to be eligible to receive a medal under this section.

(2)(a) Except as provided in (b) of this subsection and subsection (3) of this section, only one medal may be presented to the family of an organ donor.

(b) In the case of a family in which more than one member is an organ donor, the governor shall award and the primary organ procurement organization shall present an additional medal on behalf of each organ donor to his or her eligible family.

(3)(a) Duplicate medals may be purchased by the family or person eligible to receive the medal. The price of the duplicate medal shall be sufficient to cover its cost.

(b) Anyone not eligible to receive a medal under this chapter may request from the eligible family or person permission to purchase duplicate medals. The family's or person's decision to grant or withhold permission shall be in writing and shall be final. The family's or person's decision shall be honored by the governor.

**NEW SECTION.** Sec. 5. The Washington gift of life medal shall be of bronze and shall consist of the seal of the state of Washington, surrounded by a raised laurel wreath and suspended from a ring attached by a dark green ribbon. The reverse of the decoration within the raised laurel wreath shall be inscribed with the words: "For the greatest act of kindness in donating organs to enhance the lives of others."

**NEW SECTION.** Sec. 6. Sections I through 5 of this act constitute a new chapter in Title 1 RCW.

Passed the Senate February 14, 1998.

Passed the House March 3, 1998.

Approved by the Governor March 18, 1998.

Filed in Office of Secretary of State March 18, 1998.

## CHAPTER 60

[Engrossed Substitute House Bill 2836]  
FISH RUN RECOVERY—PILOT PROGRAM

AN ACT Relating to a pilot program for the recovery of fish runs listed under the federal endangered species act; creating new sections; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** The legislature recognizes the need to address listings that are made under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.) in a way that will make the most efficient use of existing efforts. The legislature finds that the principle of adaptive management requires that different models should be tried so that the lessons learned from these models can be put to use throughout the state. It is the intent of the legislature to create a pilot program for southwestern Washington to address the recent steelhead listings and which takes full advantage of all state and local efforts at habitat restoration in that area to date.

**NEW SECTION. Sec. 2. (1)** A pilot program for steelhead recovery is established in Clark, Cowlitz, Lewis, Skamania, and Wahkiakum counties within the habitat area classified as evolutionarily significant unit 4 by the federal national marine fisheries service. The management board created under subsection (2) of this section is responsible for implementing the habitat portion of the approved steelhead recovery initiative and is empowered to receive and disburse funds for the approved steelhead recovery initiative. The management board created pursuant to this section shall constitute the regional council for this area responsible for fulfilling the requirements and exercising the powers of a regional council under chapter . . . , Laws of 1998 (Substitute House Bill No. 2496).

(2) A management board consisting of fifteen voting members is created within evolutionarily significant unit 4. The members shall consist of one county commissioner or designee from each of the five participating counties selected by each county legislative authority; one member representing the cities contained within evolutionarily significant unit 4 as a voting member selected by the cities in evolutionarily significant unit 4; a representative of the Cowlitz Tribe appointed by the tribe; one state legislator elected from one of the legislative districts contained within evolutionarily significant unit 4 selected by that group of state legislators representing the area; five representatives to include at least one member who represents private property interests appointed by the five county commissioners or designees; one hydro utility representative nominated by hydro utilities and appointed by the five county commissioners or designees; and one representative nominated from the environmental community who resides in evolutionarily significant unit 4 appointed by the five county commissioners or designees. The board shall appoint and consult a technical advisory committee, which shall include four representatives of state agencies one each appointed by the directors of the departments of ecology, fish and wildlife, and transportation, and the commissioner of public lands. The board may also appoint



additional persons to the technical advisory committee as needed. The chair of the board shall be selected from among the five county commissioners or designees and the legislator on the board. In making appointments under this subsection, the county commissioners shall consider recommendations of interested parties. Vacancies shall be filled in the same manner as the original appointments were selected. No action may be brought or maintained against any management board member, the management board, or any of its agents, officers, or employees for any noncontractual acts or omissions in carrying out the purposes of this section.

(3)(a) The management board shall participate in the development of a recovery plan to implement its responsibilities under (b) of this subsection. The management board shall consider local watershed efforts and activities as well as habitat conservation plans in the implementation of the recovery plan. Any of the participating counties may continue its own efforts for restoring steelhead habitat. Nothing in this section limits the authority of units of local government to enter into interlocal agreements under chapter 39.34 RCW or any other provision of law.

(b) The management board is responsible for implementing the habitat portions of the local government responsibilities of the lower Columbia steelhead conservation initiative approved by the state and the national marine fisheries service. The management board may work in cooperation with the state and the national marine fisheries service to modify the initiative, or to address habitat for other aquatic species that may be subsequently listed under the federal endangered species act. The management board may not exercise authority over land or water within the individual counties or otherwise preempt the authority of any units of local government.

(c) The management board shall prioritize as appropriate and approve projects and programs related to the recovery of lower Columbia river steelhead runs, including the funding of those projects and programs, and coordinate local government efforts as prescribed in the recovery plan. The management board shall establish criteria for funding projects and programs based upon their likely value in steelhead recovery. The management board may consider local economic impact among the criteria, but jurisdictional boundaries and factors related to jurisdictional population may not be considered as part of the criteria.

(d) The management board shall assess the factors for decline along each prioritized stream as listed in the lower Columbia steelhead conservation initiative. The management board is encouraged to take a stream-by-stream approach in conducting the assessment which utilizes state and local expertise, including volunteer groups, interest groups, and affected units of local government.

(4) The management board has the authority to hire and fire staff, including an executive director, enter into contracts, accept grants and other moneys, disburse funds, make recommendations to cities and counties about potential code changes and the development of programs and incentives upon request, pay all

necessary expenses, and may choose a fiduciary agent. The management board shall report on its progress on a quarterly basis to the legislative bodies of the five participating counties and the state natural resource-related agencies.

(5) The pilot program terminates on July 1, 2002.

(6) For purposes of this section, "evolutionarily significant unit" means the habitat area identified for an evolutionarily significant unit of an aquatic species listed or proposed for listing as a threatened or endangered species under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.).

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the House March 9, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 19, 1998.

Filed in Office of Secretary of State March 19, 1998.

**CHAPTER 61**

[Substitute House Bill 1750]

**MOBILE HOME PARK SEWER SYSTEMS**

AN ACT Relating to mobile home park sewer systems; and adding a new section to chapter 35.67 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 35.67 RCW to read as follows:

Cities, towns, or counties may not require existing mobile home parks to replace existing, functional septic systems with a sewer system within the community unless the local board of health determines that the septic system is failing.

Passed the House March 7, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

**CHAPTER 62**

[Substitute House Bill 1971]

**PREVENTING DOUBLE PAYMENT FOR INSURANCE BENEFITS FOR TEACHERS WHO ARE MEMBERS OF THE LEGISLATURE**

AN ACT Relating to preventing double payment for insurance benefits for teachers who are members of the legislature; adding new sections to chapter 44.04 RCW; adding a new section to chapter 41.05 RCW; and declaring an emergency.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 44.04 RCW to read as follows:

The chief clerk of the house of representatives and the secretary of the senate shall prepare vouchers for the state treasurer for sums covering amounts due a school district for any teacher who is on a leave of absence as a legislator, and who has chosen to continue insurance benefits provided by the school district, in lieu of insurance benefits provided to that legislator as a state employee. The amount of reimbursement due the school district is for the actual cost of continuing benefits, but may not exceed the cost of the insurance benefits package that would otherwise be provided through the health care authority.

**NEW SECTION.** Sec. 2. A new section is added to chapter 41.05 RCW to read as follows:

The authority shall adopt rules that provide for members of the legislature who choose reimbursement under section 1 of this act in lieu of insurance benefits under this chapter.

**NEW SECTION.** Sec. 3. A new section is added to chapter 44.04 RCW to read as follows:

Upon presentation to the state treasurer of a warrant issued by the treasurer and drawn for the purposes under section 1 of this act, the treasurer shall pay the amount necessary from appropriated funds. If sufficient funds have not been appropriated, the treasurer shall endorse the warrant and the warrant draws interest from the date of the endorsement until paid.

**NEW SECTION.** Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the House January 23, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

## CHAPTER 63

[Substitute House Bill 1977]

### RUNNING START—ATTENDANCE IN OUT-OF-STATE COLLEGES

AN ACT Relating to high school students' options; adding a new section to chapter 28A.600 RCW; and creating a new section.

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

**NEW SECTION.** Sec. 1. The legislature finds that students may have difficulty attending community college for the purpose of the running start program due to the distance of the nearest community college. In these cases, it may be more advantageous for students in border counties to attend community colleges in neighboring states. The legislature encourages school districts to

pursue interagency agreements with community colleges in neighboring states when it is in the best interests of the student's educational progress.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28A.600 RCW to read as follows:

(1) School districts in Washington and community colleges in Oregon and Idaho may enter into cooperative agreements under chapter 39.34 RCW for the purpose of allowing eleventh and twelfth grade students who are enrolled in the school districts to earn high school and college credit concurrently.

(2) Except as provided in subsection (3) of this section, if a school district exercises the authority granted in subsection (1) of this section, the provisions of RCW 28A.600.310 through 28A.600.360 and 28A.600.380 through 28A.600.400 shall apply to the agreements.

(3) A school district may enter an agreement in which the community college agrees to accept an amount less than the state-wide uniform rate under RCW 28A.600.310(2) if the community college does not charge participating students tuition and fees. A school district may not pay a per-credit rate in excess of the state-wide uniform rate under RCW 28A.600.310(2).

(4) To the extent feasible, the agreements shall permit participating students to attend the community college without paying any tuition and fees. The agreements shall not permit the community college to charge participating students nonresident tuition and fee rates.

(5) The agreements shall ensure that participating students are permitted to enroll only in courses that are transferable to one or more institutions of higher education as defined in RCW 28B.10.016.

Passed the House February 10, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

## CHAPTER 64

[House Bill 2293]

### DISTRICT COURT JUDGES—SNOHOMISH COUNTY

AN ACT Relating to the number of district court judges; and amending RCW 3.34.010.

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

**Sec. 1.** RCW 3.34.010 and 1995 c 168 s 1 are each amended to read as follows:

The number of district judges to be elected in each county shall be: Adams, two; Asotin, one; Benton, three; Chelan, two; Clallam, two; Clark, five; Columbia, one; Cowlitz, two; Douglas, one; Ferry, one; Franklin, one; Garfield, one; Grant, two; Grays Harbor, two; Island, one; Jefferson, one; King, twenty-six; Kitsap, three; Kittitas, two; Klickitat, two; Lewis, two; Lincoln, one; Mason, one; Okanogan, two; Pacific, two; Pend Oreille, one; Pierce, eleven; San Juan, one;

Skagit, two; Skamania, one; Snohomish, ((seven)) eight; Spokane, nine; Stevens, one; Thurston, two; Wahkiakum, one; Walla Walla, two; Whatcom, two; Whitman, one; Yakima, four. This number may be increased only as provided in RCW 3.34.020.

Passed the House February 6, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

## CHAPTER 65

[Engrossed House Bill 2302]

### POWERS OF COUNTIES REGARDING MONEYS HELD IN TRUST FOR SCHOOL DISTRICTS

AN ACT Relating to moneys held by a county in trust for school districts; adding a new section to chapter 36.01 RCW; and repealing an act for the protection of the Joshua Brown school fund on pages 219 through 223, Laws of 1875.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 36.01 RCW to read as follows:

Any county authorized by territorial law to administer moneys held in trust for the benefit of school districts within the county, which moneys were bequeathed for such purposes by testamentary provision, may dissolve any trust, the corpus of which does not exceed fifty thousand dollars, and distribute any moneys remaining in the trust to school districts within the county. Before dissolving the trust, the county must adopt a resolution finding that conditions have changed and it is no longer feasible for the county to administer the trust.

**NEW SECTION.** Sec. 2. An act for the protection of the Joshua Brown school fund, pages 219 through 223, Laws of 1875, are each repealed.

Passed the House January 26, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

## CHAPTER 66

[Engrossed Substitute House Bill 2346]

### VENDOR OVERPAYMENT RECOVERY

AN ACT Relating to recovery of vendor overpayments; adding a new section to chapter 43.20B RCW; and creating a new section.

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

**NEW SECTION.** Sec. 1. The legislature finds that more efficient and cost-effective means are available for the collection of vendor overpayments owed the state of Washington. The legislature further finds it desirable to provide vendors

a uniform formal appeal process that will streamline the current process for both the department of social and health services and the vendor.

**NEW SECTION, Sec. 2.** A new section is added to chapter 43.20B RCW to read as follows:

(1) When the department determines that a vendor was overpaid by the department for either goods or services, or both, provided to department clients, except nursing homes under chapter 74.46 RCW, the department will give written notice to the vendor. The notice will include the amount of the overpayment, the basis for the claim, and the rights of the vendor under this section.

(2) The notice may be served upon the vendor in the manner prescribed for the service of a summons in civil action or be mailed to the vendor at the last known address by certified mail, return receipt requested, demanding payment within twenty days of the date of receipt.

(3) The vendor has the right to an adjudicative proceeding governed by the administrative procedure act, chapter 34.05 RCW, and the rules of the department. The vendor's application for an adjudicative proceeding must be in writing, state the basis for contesting the overpayment notice, and include a copy of the department's notice. The application must be served on and received by the department within twenty-eight days of the vendor's receipt of the notice of overpayment. The vendor must serve the department in a manner providing proof of receipt.

(4) Where an adjudicative proceeding has been requested, the presiding or reviewing office will determine the amount, if any, of the overpayment received by the vendor.

(5) If the vendor fails to attend or participate in the adjudicative proceeding, upon a showing of valid service, the presiding or reviewing officer may enter an administrative order declaring the amount claimed in the notice to be assessed against the vendor and subject to collection action by the department.

(6) Failure to make an application for an adjudicative proceeding within twenty-eight days of the date of notice will result in the establishment of a final debt against the vendor in the amount asserted by the department and that amount is subject to collection action. The department may also charge the vendor with any costs associated with the collection of any final overpayment or debt established against the vendor.

(7) The department may enforce a final overpayment or debt through lien and foreclosure, distraint, seizure and sale, order to withhold and deliver, or other collection action available to the department to satisfy the debt due.

(8) Debts determined under this chapter are subject to collection action without further necessity of action by a presiding or reviewing officer. The department may collect the debt in accordance with RCW 43.20B.635, 43.20B.640, and 43.20B.680. In addition, a vendor lien may be subject to distraint and seizure and sale in the same manner as prescribed for support liens in RCW 74.20A.130.

(9) This legislation applies to overpayments for goods or services provided on or after July 1, 1998.

(10) The department may adopt rules consistent with this section.

Passed the House February 10, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

## CHAPTER 67

[Engrossed House Bill 2350]

### WASHINGTON STATE CRIME INFORMATION CENTER—PROVISION OF SEX OFFENDER CENTRAL REGISTRY INFORMATION

AN ACT Relating to the Washington state crime information center; amending RCW 43.43.500 and 43.43.510; and providing an effective date.

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

**Sec. 1.** RCW 43.43.500 and 1967 ex.s. c 27 s 1 are each amended to read as follows:

There is established the Washington state crime information center to be located in the records division of the Washington state patrol and to function under the direction of the chief of the Washington state patrol. The center shall serve to coordinate crime information, by means of data processing, for all law enforcement agencies in the state. It shall make such use of the facilities of the law enforcement teletype system as is practical. It shall provide access to the national crime information center, to motor vehicle and driver license information, to the sex offender central registry, and to such other public records as may be accessed by data processing and which are pertinent to law enforcement.

**Sec. 2.** RCW 43.43.510 and 1995 c 312 s 45 are each amended to read as follows:

As soon as is practical and feasible there shall be established, by means of data processing, files listing stolen and wanted vehicles, outstanding warrants, identifying children whose parents, custodians, or legal guardians have reported as having run away from home or the custodial residence, identifiable stolen property, files maintaining the central registry of sex offenders required to register under chapter 9A.44 RCW, and such other files as may be of general assistance to law enforcement agencies.

**NEW SECTION.** **Sec. 3.** This act takes effect June 30, 1999.

Passed the House February 6, 1998.

Passed the Senate March 2, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

## CHAPTER 68

[Engrossed House Bill 2414]

## OUTDOOR BURNING—EXTENSION FOR URBAN GROWTH AREAS OF SMALLER CITIES

AN ACT Relating to outdoor burning; and amending RCW 70.94.743.

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

Sec. 1. RCW 70.94.743 and 1997 c 225 s 1 are each amended to read as follows:

(1) Consistent with the policy of the state to reduce outdoor burning to the greatest extent practical:

(a) Outdoor burning shall not be allowed in any area of the state where federal or state ambient air quality standards are exceeded for pollutants emitted by outdoor burning.

(b) Outdoor burning shall not be allowed in any urban growth area as defined by RCW 36.70A.030, or any city of the state having a population greater than ten thousand people if such cities are threatened to exceed state or federal air quality standards, and alternative disposal practices consistent with good solid waste management are reasonably available or practices eliminating production of organic refuse are reasonably available. In no event shall such burning be allowed after December 31, 2000, except that within the urban growth areas for cities having a population of less than five thousand people, that are neither within nor contiguous with any nonattainment or maintenance area designated under the federal clean air act, in no event shall such burning be allowed after December 31, 2006.

(c) Notwithstanding any other provision of this section, outdoor burning may be allowed for the exclusive purpose of managing storm or flood-related debris. The decision to allow burning shall be made by the entity with permitting jurisdiction as determined under RCW 70.94.660 or 70.94.755. If outdoor burning is allowed in areas subject to (a) or (b) of this subsection, a permit shall be required, and a fee may be collected to cover the expenses of administering and enforcing the permit. All conditions and restrictions pursuant to RCW 70.94.750(1) and 70.94.775 apply to outdoor burning allowed under this section.

(2) "Outdoor burning" means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion.

(3) This section shall not apply to silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas.

Passed the House March 7, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.



## CHAPTER 69

[Second Substitute House Bill 2430]

## ADVANCED COLLEGE TUITION PAYMENT PROGRAM—ADMINISTRATION

AN ACT Relating to the advanced college tuition payment program; amending RCW 28B.95.060; reenacting and amending RCW 42.17.310; adding new sections to chapter 28B.95 RCW; and declaring an emergency.

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

**Sec. 1.** RCW 42.17.310 and 1997 c 310 s 2, 1997 c 274 s 8, 1997 c 250 s 7, 1997 c 239 s 4, 1997 c 220 s 120 (Referendum Bill No. 48), and 1997 c 58 s 900 are each reenacted and amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (i) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (ii) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to export projects pursuant to RCW 43.23.035.

(p) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order.

(w)(i) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health, except this exemption does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations; (ii) the current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department, if the provider requests that this information be withheld from public inspection and copying, and provides to the department an accurate alternate or business address and business telephone number. On or after January 1, 1995, the current residential address and residential telephone number of a health care provider governed under RCW 18.130.140 maintained in the files of the department shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under RCW 42.17.260(9).

(x) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(y) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420.

(z) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(aa) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(bb) Financial and valuable trade information under RCW 51.36.120.

(cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030.

(dd) Information that identifies a person who, while an agency employee: (i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

(ee) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

(ff) Business related information protected from public inspection and copying under RCW 15.86.110.

(gg) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW.

(hh) Information and documents created specifically for, and collected and maintained by a quality improvement committee pursuant to RCW 43.70.510, regardless of which agency is in possession of the information and documents.

(ii) Personal information in files maintained in a data base created under RCW 43.07.360.

(jj) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010.

(kk) Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043.

(ll) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service. However, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides.

(mm) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310. If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this section as exempt

from disclosure. If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality.

(nn) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110.

(oo) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

NEW SECTION. Sec. 2. The committee shall maintain appropriate offices and employ such personnel as may be necessary to perform its duties including, but not be limited to a director, an accountant, and a confidential secretary. The positions are exempt from classified service under chapter 41.06 RCW. The employees shall be employees of the higher education coordinating board.

NEW SECTION. Sec. 3. No member of the committee is liable for the negligence, default, or failure of any other person or members of the committee to perform the duties of office and no member may be considered or held to be an insurer of the funds or assets of any of the advanced college tuition payment program.

Sec. 4. RCW 28B.95.060 and 1997 c 289 s 6 are each amended to read as follows:

(1) The Washington advanced college tuition payment program account is created in the custody of the state treasurer. The account shall be a discrete nontreasury account retaining its interest earnings in accordance with RCW 43.79A.040.

(2) The governing body shall deposit in the account all money received for the program. The account shall be self-sustaining and consist of payments received from purchasers of tuition units and funds received from other sources, public or private. With the exception of investment and operating costs associated with the investment of money by the investment board paid under RCW 43.33A.160 and 43.84.160, the account shall be credited with all investment income earned by the account. Disbursements from the account are exempt from appropriations and the allotment provisions of chapter 43.88 RCW. Money used for program administration is subject to the allotment and budgetary controls of chapter 43.88 RCW, ~~((but no))~~ and an appropriation is required for expenditures. Program administration shall include, but not be limited to: The salaries and expenses of the program personnel including lease payments, travel, and goods and services necessary for program operation; contracts for program promotion and advertisement, audits, and account management; and other general costs of conducting the business of the program.

(3) The assets of the account may be spent without appropriation for the purpose of making payments to institutions of higher education on behalf of the qualified beneficiaries, making refunds, transfers, or direct payments upon the termination of the Washington advanced college tuition payment program ~~((, and paying the costs of administration of the program))~~. Disbursements from the account shall be made only on the authorization of the board.

NEW SECTION. Sec. 5. Sections 2 and 3 of this act are each added to chapter 28B.95 RCW.

NEW SECTION. Sec. 6. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the House February 13, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

## CHAPTER 70

[Substitute House Bill 2452]

### DEFINING MEDICATION ASSISTANCE IN COMMUNITY-BASED SETTINGS

AN ACT Relating to defining medication assistance in community-based settings; amending RCW 69.41.010; and adding a new section to chapter 69.41 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 69.41 RCW to read as follows:

Individuals residing in community-based settings, such as adult family homes, boarding homes, and residential care settings for the developmentally disabled, including an individual's home, might need medication assistance due

to physical or mental limitations that prevent them from self-administering their legend drugs or controlled substances. The practitioner in consultation with the individual or his or her representative and the community-based setting, if involved, determines that medication assistance is appropriate for this individual. Medication assistance can take different forms such as opening containers, handing the container or medication to the individual, preparing the medication with prior authorization, using enablers for facilitating the self-administration of medication, and other means of assisting in the administration of legend drugs or controlled substances commonly employed in community-based settings. Nothing in this chapter affects the right of an individual to refuse medication or requirements relating to informed consent.

**Sec. 2.** RCW 69.41.010 and 1996 c 178 s 16 are each amended to read as follows:

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

(1) "Administer" means the direct application of a legend drug whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

- (a) A practitioner; or
- (b) The patient or research subject at the direction of the practitioner.

(2) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a legend drug, whether or not there is an agency relationship.

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

(4) "Dispense" means the interpretation of a prescription or order for a legend drug and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(5) "Dispenser" means a practitioner who dispenses.

(6) "Distribute" means to deliver other than by administering or dispensing a legend drug.

(7) "Distributor" means a person who distributes.

(8) "Drug" means:

(a) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) Substances (other than food, minerals or vitamins) intended to affect the structure or any function of the body of man or animals; and

(d) Substances intended for use as a component of any article specified in clause (a), (b), or (c) of this subsection. It does not include devices or their components, parts, or accessories.

(9) "Legend drugs" means any drugs which are required by state law or regulation of the state board of pharmacy to be dispensed on prescription only or are restricted to use by practitioners only.

(10) "Medication assistance" means assistance rendered by a nonpractitioner to an individual residing in a community-based setting specified in section 1 of this act to facilitate the individual's self-administration of a legend drug or controlled substance. It includes reminding or coaching the individual, handing the medication container to the individual, opening the individual's medication container, using an enabler, or placing the medication in the individual's hand, and such other means of medication assistance as defined by rule adopted by the department. The nonpractitioner may help in the preparation of legend drugs or controlled substances for self-administration where a practitioner has determined, in consultation with the individual or the individual's representative, that such medication assistance is necessary and appropriate. Medication assistance shall not include assistance with intravenous medications or injectable medications.

(11) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

~~((+H))~~ (12) "Practitioner" means:

(a) A physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW, an optometrist under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, an osteopathic physician assistant under chapter 18.57A RCW, a physician assistant under chapter 18.71A RCW, or a pharmacist under chapter 18.64 RCW;

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a legend drug in the course of professional practice or research in this state; and

(c) A physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery in any state, or province of Canada, which shares a common border with the state of Washington.

~~((+2))~~ (13) "Secretary" means the secretary of health or the secretary's designee.

Passed the House February 13, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.



## CHAPTER 71

[Substitute House Bill 2461]

## STATE FOREST LANDS—TIMING OF DISTRIBUTION OF MONEYS TO COUNTIES

AN ACT Relating to moneys derived from state forest lands; reenacting and amending RCW 76.12.120; and adding a new section to chapter 76.12 RCW.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 76.12 RCW to read as follows:

With regard to moneys remaining under RCW 76.12.030(2), within seven working days of receipt of these moneys, the department shall certify to the state treasurer the amounts to be distributed to the counties. The state treasurer shall distribute funds to the counties four times per month, with no more than ten days between each payment date.

Sec. 2. RCW 76.12.120 and 1988 c 128 s 32 and 1988 c 70 s 1 are each reenacted and amended to read as follows:

All land, acquired or designated by the department as state forest land, shall be forever reserved from sale, but the timber and other products thereon may be sold or the land may be leased in the same manner and for the same purposes as is authorized for state granted land if the department finds such sale or lease to be in the best interests of the state and approves the terms and conditions thereof.

Except as provided in RCW 79.12.035, all money derived from the sale of timber or other products, or from lease, or from any other source from the land, except where the Constitution of this state or RCW 76.12.030 requires other disposition, shall be disposed of as follows:

(1) Fifty percent shall be placed in the forest development account.

(2) Fifty percent shall be prorated and distributed to the state general fund, to be dedicated for the benefit of the public schools, and the county in which the land is located according to the relative proportions of tax levies of all taxing districts in the county. The portion to be distributed to the state general fund shall be based on the regular school levy rate under RCW 84.52.065 as now or hereafter amended and the levy rate for any maintenance and operation special school levies. With regard to the portion to be distributed to the counties, the department shall certify to the state treasurer the amounts to be distributed within seven working days of receipt of the money. The state treasurer shall distribute funds to the counties four times per month, with no more than ten days between each payment date. The money distributed to the county shall be paid, distributed, and prorated to the various other funds in the same manner as general taxes are paid and distributed during the year of payment.

Passed the House February 13, 1998.

Passed the Senate March 6, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

**CHAPTER 72**

[Engrossed House Bill 2465]

**PODIATRIC PHYSICIANS AND SURGEONS—PRIVILEGED OR CONFIDENTIAL  
COMMUNICATIONS**

AN ACT Relating to health care providers' communication with patients; and amending RCW 5.60.060.

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

**Sec. 1.** RCW 5.60.060 and 1997 c 338 s 1 are each amended to read as follows:

(1) A husband shall not be examined for or against his wife, without the consent of the wife, nor a wife for or against her husband without the consent of the husband; nor can either during marriage or afterward, be without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse if the marriage occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said husband or wife against any child of whom said husband or wife is the parent or guardian, nor to a proceeding under chapter 70.96A or 71.05 RCW: **PROVIDED**, That the spouse of a person sought to be detained under chapter 70.96A or 71.05 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness.

(2)(a) An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.

(b) A parent or guardian of a minor child arrested on a criminal charge may not be examined as to a communication between the child and his or her attorney if the communication was made in the presence of the parent or guardian. This privilege does not extend to communications made prior to the arrest.

(3) A member of the clergy or a priest shall not, without the consent of a person making the confession, be examined as to any confession made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.

(4) Subject to the limitations under RCW 70.96A.140 or 71.05.250, a physician or surgeon or osteopathic physician or surgeon or podiatric physician or surgeon shall not, without the consent of his or her patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him or her to prescribe or act for the patient, except as follows:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and

(b) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to waive the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

(5) A public officer shall not be examined as a witness as to communications made to him or her in official confidence, when the public interest would suffer by the disclosure.

(6)(a) A peer support group counselor shall not, without consent of the law enforcement officer making the communication, be compelled to testify about any communication made to the counselor by the officer while receiving counseling. The counselor must be designated as such by the sheriff, police chief, or chief of the Washington state patrol, prior to the incident that results in counseling. The privilege only applies when the communication was made to the counselor while acting in his or her capacity as a peer support group counselor. The privilege does not apply if the counselor was an initial responding officer, a witness, or a party to the incident which prompted the delivery of peer support group counseling services to the law enforcement officer.

(b) For purposes of this section, "peer support group counselor" means a:

(i) Law enforcement officer, or civilian employee of a law enforcement agency, who has received training to provide emotional and moral support and counseling to an officer who needs those services as a result of an incident in which the officer was involved while acting in his or her official capacity; or

(ii) Nonemployee counselor who has been designated by the sheriff, police chief, or chief of the Washington state patrol to provide emotional and moral support and counseling to an officer who needs those services as a result of an incident in which the officer was involved while acting in his or her official capacity.

(7) A sexual assault advocate may not, without the consent of the victim, be examined as to any communication made by the victim to the sexual assault advocate.

(a) For purposes of this section, "sexual assault advocate" means the employee or volunteer from a rape crisis center, victim assistance unit, program, or association, that provides information, medical or legal advocacy, counseling, or support to victims of sexual assault, who is designated by the victim to accompany the victim to the hospital or other health care facility and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings.

(b) A sexual assault advocate may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. Any sexual assault advocate participating in good faith in the disclosing of records and communications under this section shall have immunity from any liability, civil, criminal, or otherwise, that might result from the action. In any

proceeding, civil or criminal, arising out of a disclosure under this section, the good faith of the sexual assault advocate who disclosed the confidential communication shall be presumed.

Passed the House February 11, 1998.  
Passed the Senate March 4, 1998.  
Approved by the Governor March 20, 1998.  
Filed in Office of Secretary of State March 20, 1998.

**CHAPTER 73**

[House Bill 2499]

**JURISDICTION OF DISTRICT COURTS IN CIVIL CASES—LONG-ARM STATUTE**

AN ACT Relating to jurisdiction of district courts in civil cases; and amending RCW 3.66.100.

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

**Sec. 1.** RCW 3.66.100 and 1987 c 442 s 1101 are each amended to read as follows:

(1) Every district judge having authority to hear a particular case may issue criminal process in and to any place in the state.

(2) ~~((Notwithstanding any provision in the civil rules to the contrary;))~~ Every district judge having authority to hear a particular case may issue civil process, including writs of execution, attachment, garnishment, and replevin, in and to any place ~~((in the state))~~ as permitted by statute or rule. This statute does not authorize service of process pursuant to RCW 4.28.180 in actions filed pursuant to chapter 12.40 RCW or in civil infraction matters.

Passed the House February 10, 1998.  
Passed the Senate March 5, 1998.  
Approved by the Governor March 20, 1998.  
Filed in Office of Secretary of State March 20, 1998.

**CHAPTER 74**

[House Bill 2503]

**STORM WATER CONTROL FACILITIES—CONSIDERATION OF CUSTOMER INCOME LEVEL FOR RATES**

AN ACT Relating to storm water control facilities; and amending RCW 36.89.080.

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

**Sec. I.** RCW 36.89.080 and 1995 c 124 s 1 are each amended to read as follows:

Any county legislative authority may provide by resolution for revenues by fixing rates and charges for the furnishing of service to those served or receiving benefits or to be served or to receive benefits from any storm water control facility or contributing to an increase of surface water runoff. In fixing rates and charges, the county legislative authority may in its discretion consider: (1)

Services furnished or to be furnished; (2) benefits received or to be received; (3) the character and use of land or its water runoff characteristics; (4) the nonprofit public benefit status, as defined in RCW 24.03.490, of the land user; ~~((or))~~ (5) income level of persons served or provided benefits under this chapter, including senior citizens and disabled persons; or (6) any other matters which present a reasonable difference as a ground for distinction. The service charges and rates collected shall be deposited in a special fund or funds in the county treasury to be used only for the purpose of paying all or any part of the cost and expense of maintaining and operating storm water control facilities, all or any part of the cost and expense of planning, designing, establishing, acquiring, developing, constructing and improving any of such facilities, or to pay or secure the payment of all or any portion of any issue of general obligation or revenue bonds issued for such purpose.

Passed the House March 7, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

## CHAPTER 75

[House Bill 2534]

### STUDENTS FOR DOCTOR OF PHARMACY—WAIVER OF OPERATING FEES

AN ACT Relating to waiving operating fees for students registered in a program for doctor of pharmacy; and amending RCW 28B.15.100.

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

**Sec. 1.** RCW 28B.15.100 and 1995 1st sp.s. c 9 s 8 are each amended to read as follows:

(1) The governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges shall charge to and collect from each of the students registering at the particular institution for any quarter or semester such tuition fees and services and activities fees, and other fees as such board shall in its discretion determine. The total of all fees shall be rounded to the nearest whole dollar amount: **PROVIDED**, That such tuition fees for other than the summer term shall be in the amounts for the respective institutions as otherwise set forth in RCW 28B.15.067.

(2) Part-time students shall be charged tuition and services and activities fees proportionate to full-time student rates established for residents and nonresidents: **PROVIDED**, That students registered for fewer than two credit hours shall be charged tuition and services and activities fees at the rate established for two credit hours: **PROVIDED FURTHER**, That, subject to the limitations of RCW 28B.15.910, residents of Idaho or Oregon who are enrolled in community college district number twenty for six or fewer credits during any quarter or semester may be exempted from payment of all or a portion of the nonresident tuition fees differential upon a declaration by the higher education coordinating board that it

finds Washington residents from the community college district are afforded substantially equivalent treatment by such other states.

(3) Full-time students registered for more than eighteen credit hours shall be charged an additional operating fee for each credit hour in excess of eighteen hours at the applicable established per credit hour tuition fee rate for part-time students: PROVIDED, That, subject to the limitations of RCW 28B.15.910, the governing boards of the state universities and the community colleges may exempt all or a portion of the additional charge, for students who are registered exclusively in first professional programs in medicine, dental medicine, veterinary medicine, doctor of pharmacy, or law, or who are registered exclusively in required courses in vocational preparatory programs.

Passed the House February 10, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

## CHAPTER 76

[House Bill 2577]

### HANFORD AREA ECONOMIC TRUST FUND—USE AND ADMINISTRATION

AN ACT Relating to the Hanford area economic investment fund; and amending RCW 43.31.422, 43.31.425, and 43.31.428.

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

**Sec. 1.** RCW 43.31.422 and 1993 c 280 s 44 are each amended to read as follows:

The Hanford area economic investment fund is established in the custody of the state treasurer. Moneys in the fund shall only be used for reasonable assistant attorney general costs in support of the committee or pursuant to the recommendations of the committee created in RCW 43.31.425 and the approval of the director of community, trade, and economic development for Hanford area revolving loan funds, Hanford area infrastructure projects, or other Hanford area economic development and diversification projects, but may not be used for government or nonprofit organization operating expenses. Up to five percent of moneys in the fund may be used for program administration. For the purpose of this chapter "Hanford area" means Benton and Franklin counties. Disbursements from the fund shall be on the authorization of the director of community, trade, and economic development or the director's designee after an affirmative vote of at least six members of the committee created in RCW 43.31.425 on any recommendations by the committee created in RCW 43.31.425. The fund is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for disbursements. The legislature intends to establish similar economic investment funds for areas that develop low-level radioactive waste disposal facilities.

**Sec. 2.** RCW 43.31.425 and 1991 c 272 s 20 are each amended to read as follows:

The Hanford area economic investment fund committee (~~((staffed by the local associate development organization))~~) is hereby established.

(1) The committee shall have eleven members. The governor shall appoint the members, in consultation with ~~((the Hanford area associate development organization and))~~ Hanford area elected officials, subject to the following requirements:

(a) All members shall either reside or be employed within the Hanford area.

(b) The committee shall have a balanced membership representing one member each from the elected leadership of Benton county, Franklin county, the city of Richland, the city of Kennewick, the city of Pasco, a Hanford area port district, the labor community, and four members from the Hanford area business and financial community.

(c) Careful consideration shall be given to assure minority representation on the committee.

(2) Each member appointed by the governor shall serve a term of three years, except that of the members first appointed, four shall serve two-year terms and four shall serve one-year terms. A person appointed to fill a vacancy of a member shall be appointed in a like manner and shall serve for only the unexpired term. A member is eligible for reappointment. A member may be removed by the governor for cause.

(3) The governor shall designate a member of the committee as its chairperson. The committee may elect such other officers as it deems appropriate. Six members of the committee constitute a quorum and six affirmative votes are necessary for the transaction of business or the exercise of any power or function of the committee.

(4) The members shall serve without compensation, but are entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties in accordance with RCW 43.03.050 and 43.03.060.

(5) Members shall not be liable to the state, to the fund, or to any other person as a result of their activities, whether ministerial or discretionary, as members except for willful dishonesty or intentional violations of law. The department may purchase liability insurance for members and may indemnify these persons against the claims of others.

**Sec. 3.** RCW 43.31.428 and 1991 c 272 s 21 are each amended to read as follows:

The Hanford area economic investment fund committee created under RCW 43.31.425 may:

(1) Adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) Utilize the services of other governmental agencies;

(3) Accept from any federal or state agency loans or grants for the purposes of funding Hanford area revolving loan funds, Hanford area infrastructure projects, or Hanford area economic development projects;

(4) Recommend to the director rules for the administration of the program, including the terms and rates pertaining to its loans, and criteria for awarding grants, loans, and financial guarantees;

(5) Recommend to the director a spending strategy for the moneys in the fund created in RCW 43.31.422. The strategy shall include five and ten year goals for economic development and diversification for use of the moneys in the Hanford area; ((and))

(6) Recommend to the director no more than two allocations eligible for funding per calendar year, with a first priority on Hanford area revolving loan allocations, and Hanford area infrastructure allocations followed by other Hanford area economic development and diversification projects if the committee finds that there are no suitable allocations in the priority allocations described in this section;

(7) Establish and administer a revolving fund consistent with this section and RCW 43.31.422 and 43.31.425; and

(8) Make grants from the Hanford area economic investment fund consistent with this section and RCW 43.31.422 and 43.31.425.

Passed the House February 10, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

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**CHAPTER 77**

[House Bill 2732]

**WAGE ASSIGNMENT ORDERS FOR CHILD SUPPORT OR SPOUSAL MAINTENANCE  
PAYMENTS—DELIVERY OF WITHHELD EARNINGS**

AN ACT Relating to wage assignment orders for child support or spousal maintenance payments; amending RCW 26.18.110; and reenacting and amending RCW 26.18.100.

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

**Sec. 1.** RCW 26.18.100 and 1997 c 296 s 10 and 1997 c 58 s 889 are each reenacted and amended to read as follows:

The wage assignment order shall be substantially in the following form:





You shall continue to withhold the ordered amounts from nonexempt earnings or remuneration of the obligor until notified by:

- (a) The court that the wage assignment has been modified or terminated; or
- (b) The addressee specified in the wage assignment order under this section that the accrued child support or spousal maintenance debt has been paid.

You shall promptly notify the court and the addressee specified in the wage assignment order under this section if and when the employee is no longer employed by you, or if the obligor no longer receives earnings or remuneration from you. If you no longer employ the employee, the wage assignment order shall remain in effect until you are no longer in possession of any earnings or remuneration owed to the employee.

You shall deliver the withheld earnings or remuneration to the Washington state support registry or other address stated below ((at)) within five working days of each regular pay interval.

You shall deliver a copy of this order to the obligor as soon as is reasonably possible. This wage assignment order has priority over any other wage assignment or garnishment, except for another wage assignment or garnishment for child support or spousal maintenance, or order to withhold or deliver under chapter 74.20A RCW.

WHETHER OR NOT YOU OWE ANYTHING TO THE OBLIGOR, YOUR FAILURE TO ANSWER AS REQUIRED MAY MAKE YOU LIABLE FOR THE AMOUNT OF SUPPORT MONEYS THAT SHOULD HAVE BEEN WITHHELD FROM THE OBLIGOR'S EARNINGS OR SUBJECT TO CONTEMPT OF COURT.

NOTICE TO OBLIGOR: YOU HAVE A RIGHT TO REQUEST A HEARING IN THE SUPERIOR COURT THAT ISSUED THIS WAGE ASSIGNMENT ORDER, TO REQUEST THAT THE COURT QUASH, MODIFY, OR TERMINATE THE WAGE ASSIGNMENT ORDER. REGARDLESS OF THE FACT THAT YOUR WAGES ARE BEING WITHHELD PURSUANT TO THIS ORDER, YOU MAY HAVE SUSPENDED OR NOT RENEWED A PROFESSIONAL, DRIVER'S, OR OTHER LICENSE IF YOU ACCRUE CHILD SUPPORT ARREARAGES TOTALING MORE THAN SIX MONTHS OF CHILD SUPPORT PAYMENTS OR FAIL TO MAKE PAYMENTS TOWARDS A SUPPORT ARREARAGE IN AN AMOUNT THAT EXCEEDS SIX MONTHS OF PAYMENTS.

DATED THIS . . . . day of . . . ., 19. . .

..... Obligee, or obligee's attorney Send withheld payments to:	..... Judge/Court Commissioner ..... ..... .....
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**Sec. 2.** RCW 26.18.110 and 1994 c 230 s 5 are each amended to read as follows:

(1) An employer upon whom service of a wage assignment order has been made shall answer the order by sworn affidavit within twenty days after the date of service. The answer shall state whether the obligor is employed by or receives earnings or other remuneration from the employer, whether the employer will honor the wage assignment order, and whether there are either multiple child support or spousal maintenance attachments, or both, against the obligor.

(2) If the employer possesses any earnings or remuneration due and owing to the obligor, the earnings subject to the wage assignment order shall be withheld immediately upon receipt of the wage assignment order. The withheld earnings shall be delivered to the Washington state support registry or, if the wage assignment order is to satisfy a duty of spousal maintenance, to the addressee specified in the assignment ((~~at~~)) within five working days of each regular pay interval.

(3) The employer shall continue to withhold the ordered amounts from nonexempt earnings or remuneration of the obligor until notified by:

(a) The court that the wage assignment has been modified or terminated; or  
(b) The Washington state support registry or obligee that the accrued child support or spousal maintenance debt has been paid, provided the wage assignment order contains the language set forth under RCW 26.18.100(3)(b). The employer shall promptly notify the addressee specified in the assignment when the employee is no longer employed. If the employer no longer employs the employee, the wage assignment order shall remain in effect for one year after the employee has left the employment or the employer has been in possession of any earnings or remuneration owed to the employee, whichever is later. The employer shall continue to hold the wage assignment order during that period. If the employee returns to the employer's employment during the one-year period the employer shall immediately begin to withhold the employee's earnings or remuneration according to the terms of the wage assignment order. If the employee has not returned within one year, the wage assignment shall cease to have effect at the expiration of the one-year period, unless the employer continues to owe remuneration for employment to the obligor.

(4) The employer may deduct a processing fee from the remainder of the employee's earnings after withholding under the wage assignment order, even if the remainder is exempt under RCW 26.18.090. The processing fee may not exceed (a) ten dollars for the first disbursement made by the employer to the Washington state support registry; and (b) one dollar for each subsequent disbursement to the clerk.

(5) An order for wage assignment for support for a dependent child entered under this chapter shall have priority over any other wage assignment or garnishment, except for another wage assignment or garnishment for child support, or order to withhold and deliver under chapter 74.20A RCW. An order for wage assignment for spousal maintenance entered under this chapter shall

have priority over any other wage assignment or garnishment, except for a wage assignment, garnishment, or order to withhold and deliver under chapter 74.20A RCW for support of a dependent child, and except for another wage assignment or garnishment for spousal maintenance.

(6) An employer who fails to withhold earnings as required by a wage assignment issued under this chapter may be held liable to the obligee for one hundred percent of the support or spousal maintenance debt, or the amount of support or spousal maintenance moneys that should have been withheld from the employee's earnings whichever is the lesser amount, if the employer:

(a) Fails or refuses, after being served with a wage assignment order, to deduct and promptly remit from the unpaid earnings the amounts of money required in the order;

(b) Fails or refuses to submit an answer to the notice of wage assignment after being served; or

(c) Is unwilling to comply with the other requirements of this section.

Liability may be established in superior court. Awards in superior court shall include costs, interest under RCW 19.52.020 and 4.56.110, and reasonable attorneys' fees.

(7) No employer who complies with a wage assignment issued under this chapter may be liable to the employee for wrongful withholding.

(8) No employer may discharge, discipline, or refuse to hire an employee because of the entry or service of a wage assignment issued and executed under this chapter. If an employer discharges, disciplines, or refuses to hire an employee in violation of this section, the employee or person shall have a cause of action against the employer. The employer shall be liable for double the amount of damages suffered as a result of the violation and for costs and reasonable attorneys' fees, and shall be subject to a civil penalty of not more than two thousand five hundred dollars for each violation. The employer may also be ordered to hire, rehire, or reinstate the aggrieved individual.

(9) For wage assignments payable to the Washington state support registry, an employer may combine amounts withheld from various employees into a single payment to the Washington state support registry, if the payment includes a listing of the amounts attributable to each employee and other information as required by the registry.

(10) An employer shall deliver a copy of the wage assignment order to the obligor as soon as is reasonably possible.

Passed the House February 10, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

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**CHAPTER 78**

[House Bill 2628]

**MANUFACTURE OF METHAMPHETAMINE PENALTIES**

AN ACT Relating to manufacture of methamphetamine; reenacting and amending RCW 9.94A.320; creating a new section; and prescribing penalties.

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

**Sec. 1.** RCW 9.94A.320 and 1997 c 365 s 4, 1997 c 346 s 3, 1997 c 340 s 1, 1997 c 338 s 51, 1997 c 266 s 15, and 1997 c 120 s 5 are each reenacted and amended to read as follows:

**TABLE 2****CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL**

XV	Aggravated Murder 1 (RCW 10.95.020)
XIV	Murder 1 (RCW 9A.32.030) Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1))
XIII	Murder 2 (RCW 9A.32.050) Malicious explosion 2 (RCW 70.74.280(2)) Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120) Rape 1 (RCW 9A.44.040) Rape of a Child I (RCW 9A.44.073) Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
XI	Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076) Manslaughter 1 (RCW 9A.32.060)
X	Kidnapping 1 (RCW 9A.40.020) Child Molestation I (RCW 9A.44.083) Malicious explosion 3 (RCW 70.74.280(3)) Over 18 and deliver heroin or narcotic from Schedule I or II to someone under 18 (RCW 69.50.406) Leading Organized Crime (RCW 9A.82.060(1)(a)) Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a)) <u>Manufacture of methamphetamine (RCW 69.50.401(a)(1)(ii))</u>

- IX Assault of a Child 2 (RCW 9A.36.130)  
 Robbery 1 (RCW 9A.56.200)  
 Explosive devices prohibited (RCW 70.74.180)  
 Malignant placement of an explosive 2 (RCW 70.74.270(2))  
 Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)  
 Controlled Substance Homicide (RCW 69.50.415)  
 Sexual Exploitation (RCW 9.68A.040)  
 Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))  
 Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII Arson 1 (RCW 9A.48.020)  
 Promoting Prostitution 1 (RCW 9A.88.070)  
 Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)  
 Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))  
 (~~Manufacture,;~~) Deliver(;) or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))  
 Possession of ephedrine or pseudoephedrine with intent to manufacture methamphetamine (RCW 69.50.440)  
 Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)  
 Manslaughter 2 (RCW 9A.32.070)
- VII Burglary 1 (RCW 9A.52.020)  
 Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)  
 Introducing Contraband 1 (RCW 9A.76.140)  
 Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))  
 Child Molestation 2 (RCW 9A.44.086)

- Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- Involving a minor in drug dealing (RCW 69.50.401(f))
- Drive-by Shooting (RCW 9A.36.045)
- Unlawful Possession of a Firearm in the first degree (RCW 9A.41.040(1)(a))
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- VI Bribery (RCW 9A.68.010)
- Rape of a Child 3 (RCW 9A.44.079)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Incest 1 (RCW 9A.64.020(1))
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II (except heroin or cocaine) (RCW 69.50.401(a)(1)(i))
- Intimidating a Judge (RCW 9A.72.160)
- Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))
- Theft of a Firearm (RCW 9A.56.300)
- V Persistent prison misbehavior (RCW 9.94.070)
- Criminal Mistreatment 1 (RCW 9A.42.020)
- Abandonment of dependent person 1 (RCW 9A.42.060)
- Rape 3 (RCW 9A.44.060)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Child Molestation 3 (RCW 9A.44.089)
- Kidnapping 2 (RCW 9A.40.030)
- Extortion 1 (RCW 9A.56.120)
- Incest 2 (RCW 9A.64.020(2))
- Perjury 1 (RCW 9A.72.020)
- Extortionate Extension of Credit (RCW 9A.82.020)

Advancing money or property for extortionate extension of credit (RCW 9A.82.030)  
Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)  
Rendering Criminal Assistance 1 (RCW 9A.76.070)  
Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))  
Sexually Violating Human Remains (RCW 9A.44.105)  
Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))  
Possession of a Stolen Firearm (RCW 9A.56.310)

IV

Residential Burglary (RCW 9A.52.025)  
Theft of Livestock 1 (RCW 9A.56.080)  
Robbery 2 (RCW 9A.56.210)  
Assault 2 (RCW 9A.36.021)  
Escape 1 (RCW 9A.76.110)  
Arson 2 (RCW 9A.48.030)  
Commercial Bribery (RCW 9A.68.060)  
Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)  
Malicious Harassment (RCW 9A.36.080)  
Threats to Bomb (RCW 9.61.160)  
Willful Failure to Return from Furlough (RCW 72.66.060)  
Hit and Run—Injury Accident (RCW 46.52.020(4))  
Hit and Run with Vessel—Injury Accident (RCW 88.12.155(3))  
Vehicular Assault (RCW 46.61.522)  
Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana or methamphetamines) (RCW 69.50.401 (a)(1) (iii) through (v))  
Influencing Outcome of Sporting Event (RCW 9A.82.070)  
Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))  
Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))



- III Criminal Gang Intimidation (RCW 9A.46.120)
- Criminal Mistreatment 2 (RCW 9A.42.030)
- Abandonment of dependent person 2 (RCW 9A.42.070)
- Extortion 2 (RCW 9A.56.130)
- Unlawful Imprisonment (RCW 9A.40.040)
- Assault 3 (RCW 9A.36.031)
- Assault of a Child 3 (RCW 9A.36.140)
- Custodial Assault (RCW 9A.36.100)
- Unlawful possession of firearm in the second degree (RCW 9A.41.040(1)(b))
- Harassment (RCW 9A.46.020)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- Burglary 2 (RCW 9A.52.030)
- Introducing Contraband 2 (RCW 9A.76.150)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Escape 2 (RCW 9A.76.120)
- Perjury 2 (RCW 9A.72.030)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))
- Intimidating a Public Servant (RCW 9A.76.180)
- Tampering with a Witness (RCW 9A.72.120)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(iii))
- Delivery of a material in lieu of a controlled substance (RCW 69.50.401(c))
- Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
- Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
- Theft of livestock 2 (RCW 9A.56.080)
- Securities Act violation (RCW 21.20.400)
- II Unlawful Practice of Law (RCW 2.48.180)
- Malicious Mischief 1 (RCW 9A.48.070)
- Possession of Stolen Property 1 (RCW 9A.56.150)

Theft 1 (RCW 9A.56.030)  
Class B Felony Theft of Rental, Leased, or  
Lease-purchased Property (RCW  
9A.56.096(4))  
Trafficking in Insurance Claims (RCW  
48.30A.015)  
Unlicensed Practice of a Profession or Business  
(RCW 18.130.190(7))  
Health Care False Claims (RCW 48.80.030)  
Possession of controlled substance that is either  
heroin or narcotics from Schedule I or II  
(RCW 69.50.401(d))  
Possession of phencyclidine (PCP) (RCW  
69.50.401(d))  
Create, deliver, or possess a counterfeit  
controlled substance (RCW 69.50.401(b))  
Computer Trespass I (RCW 9A.52.110)  
Escape from Community Custody (RCW  
72.09.310)

I

Theft 2 (RCW 9A.56.040)  
Class C Felony Theft of Rental, Leased, or  
Lease-purchased Property (RCW  
9A.56.096(4))  
Possession of Stolen Property 2 (RCW  
9A.56.160)  
Forgery (RCW 9A.60.020)  
Taking Motor Vehicle Without Permission  
(RCW 9A.56.070)  
Vehicle Prowl 1 (RCW 9A.52.095)  
Attempting to Elude a Pursuing Police Vehicle  
(RCW 46.61.024)  
Malicious Mischief 2 (RCW 9A.48.080)  
Reckless Burning 1 (RCW 9A.48.040)  
Unlawful Issuance of Checks or Drafts (RCW  
9A.56.060)  
Unlawful Use of Food Stamps (RCW 9.91.140  
(2) and (3))  
False Verification for Welfare (RCW  
74.08.055)  
Forged Prescription (RCW 69.41.020)  
Forged Prescription for a Controlled Substance  
(RCW 69.50.403)  
Possess Controlled Substance that is a Narcotic  
from Schedule III, IV, or V or Non-

narcotic from Schedule I-V (except phencyclidine) (RCW 69.50.401(d))

**NEW SECTION.** Sec. 2. This act applies to crimes committed on or after July 1, 1998.

Passed the House February 13, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

## CHAPTER 79

[House Bill 2692]

### FOOD STAMPS OR FOOD STAMP BENEFITS TRANSFERRED ELECTRONICALLY— CLARIFICATIONS

AN ACT Relating to food stamps or food stamp benefits transferred electronically; amending RCW 9.91.140, 10.101.010, 34.05.482, 43.20B.620, 43.20B.630, 74.04.300, 74.04.380, 74.04.500, 74.04.510, 74.04.515, 74.04.520, 74.04.750, 74.08.046, 74.08.080, 74.08.331, 74.25A.045, 82.08.0297, and 82.12.0297; and reenacting and amending RCW 74.04.005.

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

**Sec. 1.** RCW 9.91.140 and 1996 c 78 s 1 are each amended to read as follows:

(1) A person who sells food stamps obtained through the program established under RCW 74.04.500 or food stamp benefits transferred electronically, or food purchased therewith, is guilty of a gross misdemeanor under RCW 9A.20.021 if the value of the stamps, benefits, or food transferred exceeds one hundred dollars, and is guilty of a misdemeanor under RCW 9A.20.021 if the value of the stamps, benefits, or food transferred is one hundred dollars or less.

(2) A person who purchases, or who otherwise acquires and sells, or who traffics in, food stamps as defined by the federal food stamp act, as amended, ((~~7~~)7 U.S.C. Sec. 2011 et seq.(~~7~~)), or food stamp benefits transferred electronically, is guilty of a class C felony under RCW 9A.20.021 if the face value of the stamps or benefits exceeds one hundred dollars, and is guilty of a gross misdemeanor under RCW 9A.20.021 if the face value of the stamps or benefits is one hundred dollars or less.

(3) A person who, in violation of 7 U.S.C. Sec. 2024(c), obtains and presents food stamps as defined by the federal food stamp act, as amended, ((~~7~~)7 U.S.C. Sec. 2011 et seq.(~~7~~)), or food stamp benefits transferred electronically, for redemption or causes such stamps or benefits to be presented for redemption through the program established under RCW 74.04.500 is guilty of a class C felony under RCW 9A.20.021.

**Sec. 2.** RCW 10.101.010 and 1997 c 59 s 3 are each amended to read as follows:

The following definitions shall be applied in connection with this chapter:

(1) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(2) "Indigent and able to contribute" means a person who, at any stage of a court proceeding, is unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are less than the anticipated cost of counsel but sufficient for the person to pay a portion of that cost.

(3) "Anticipated cost of counsel" means the cost of retaining private counsel for representation on the matter before the court.

(4) "Available funds" means liquid assets and disposable net monthly income calculated after provision is made for bail obligations. For the purpose of determining available funds, the following definitions shall apply:

(a) "Liquid assets" means cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in motor vehicles. A motor vehicle necessary to maintain employment and having a market value not greater than three thousand dollars shall not be considered a liquid asset.

(b) "Income" means salary, wages, interest, dividends, and other earnings which are reportable for federal income tax purposes, and cash payments such as reimbursements received from pensions, annuities, social security, and public assistance programs. It includes any contribution received from any family member or other person who is domiciled in the same residence as the defendant and who is helping to defray the defendant's basic living costs.

(c) "Disposable net monthly income" means the income remaining each month after deducting federal, state, or local income taxes, social security taxes, contributory retirement, union dues, and basic living costs.

(d) "Basic living costs" means the average monthly amount spent by the defendant for reasonable payments toward living costs, such as shelter, food, utilities, health care, transportation, clothing, loan payments, support payments, and court-imposed obligations.

**Sec. 3.** RCW 34.05.482 and 1988 c 288 s 425 are each amended to read as follows:

(1) An agency may use brief adjudicative proceedings if:

(a) The use of those proceedings in the circumstances does not violate any provision of law;

(b) The protection of the public interest does not require the agency to give notice and an opportunity to participate to persons other than the parties;

(c) The matter is entirely within one or more categories for which the agency by rule has adopted this section and RCW 34.05.485 through 34.05.494; and

(d) The issue and interests involved in the controversy do not warrant use of the procedures of RCW 34.05.413 through 34.05.479.

(2) Brief adjudicative proceedings are not authorized for public assistance and food stamp or benefit programs provided for in Title 74 RCW, including but not limited to public assistance as defined in RCW 74.04.005(1).

**Sec. 4.** RCW 43.20B.620 and 1987 c 75 s 43 are each amended to read as follows:

Overpayments of public assistance or food stamps or food stamp benefits transferred electronically under RCW 74.04.300 shall become a lien against the real and personal property of the recipient from the time of filing by the department with the county auditor of the county in which the recipient resides or owns property, and the lien claim has preference over the claims of all unsecured creditors.

Debts due the state for overpayments of public assistance or food stamps or food stamp benefits transferred electronically may be recovered by the state by deduction from the subsequent assistance payments to such persons, lien and foreclosure, or order to withhold and deliver, or may be recovered by civil action.

**Sec. 5.** RCW 43.20B.630 and 1989 c 175 s 100 are each amended to read as follows:

(1) Any person who owes a debt to the state for an overpayment of public assistance and/or food stamps or food stamp benefits transferred electronically shall be notified of that debt by either personal service or certified mail, return receipt requested. Personal service, return of the requested receipt, or refusal by the debtor of such notice is proof of notice to the debtor of the debt owed. Service of the notice shall be in the manner prescribed for the service of a summons in a civil action. The notice shall include a statement of the debt owed; a statement that the property of the debtor will be subject to collection action after the debtor terminates from public assistance and/or food stamps or benefits; a statement that the property will be subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver; and a statement that the net proceeds will be applied to the satisfaction of the overpayment debt. Action to collect the debt by lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver, is lawful after ninety days from the debtor's termination from public assistance and/or food stamps or benefits or the receipt of the notice of debt, whichever is later. This does not preclude the department from recovering overpayments by deduction from subsequent assistance payments, not exceeding deductions as authorized under federal law with regard to financial assistance programs: PROVIDED, That subject to federal legal requirement, deductions shall not exceed five percent of the grant payment standard if the overpayment resulted from error on the part of the department or error on the part

of the recipient without willful or knowing intent of the recipient in obtaining or retaining the overpayment.

(2) A current or former recipient who is aggrieved by a claim that he or she owes a debt for an overpayment of public assistance or food stamps or food stamp benefits transferred electronically has the right to an adjudicative proceeding pursuant to RCW 74.08.080. If no application is filed, the debt will be subject to collection action as authorized under this chapter. If a timely application is filed, the execution of collection action on the debt shall be stayed pending the final adjudicative order or termination of the debtor from public assistance and/or food stamps or food stamp benefits transferred electronically, whichever occurs later.

**Sec. 6.** RCW 74.04.005 and 1997 c 59 s 10 and 1997 c 58 s 309 are each reenacted and amended to read as follows:

For the purposes of this title, unless the context indicates otherwise, the following definitions shall apply:

(1) "Public assistance" or "assistance"—Public aid to persons in need thereof for any cause, including services, medical care, assistance grants, dishursing orders, work relief, general assistance and federal-aid assistance.

(2) "Department"—The department of social and health services.

(3) "County or local office"—The administrative office for one or more counties or designated service areas.

(4) "Director" or "secretary" means the secretary of social and health services.

(5) "Federal-aid assistance"—The specific categories of assistance for which provision is made in any federal law existing or hereafter passed by which payments are made from the federal government to the state in aid or in respect to payment by the state for public assistance rendered to any category of needy persons for which provision for federal funds or aid may from time to time be made, or a federally administered needs-based program.

(6)(a) "General assistance"—Aid to persons in need who:

(i) Are not eligible to receive federal-aid assistance, other than food stamps or food stamp benefits transferred electronically and medical assistance; however, an individual who refuses or fails to cooperate in obtaining federal-aid assistance, without good cause, is not eligible for general assistance;

(ii) Meet one of the following conditions:

(A) Pregnant: PROVIDED, That need is based on the current income and resource requirements of the federal temporary assistance for needy families program; or

(B) Subject to chapter 165, Laws of 1992, incapacitated from gainful employment by reason of bodily or mental infirmity that will likely continue for a minimum of ninety days as determined by the department.

(C) Persons who are unemployable due to alcohol or drug addiction are not eligible for general assistance. Persons receiving general assistance on July 26, 1987, or becoming eligible for such assistance thereafter, due to an alcohol or drug-related incapacity, shall be referred to appropriate assessment, treatment,

shelter, or supplemental security income referral services as authorized under chapter 74.50 RCW. Referrals shall be made at the time of application or at the time of eligibility review. Alcoholic and drug addicted clients who are receiving general assistance on July 26, 1987, may remain on general assistance if they otherwise retain their eligibility until they are assessed for services under chapter 74.50 RCW. Subsection (6)(a)(ii)(B) of this section shall not be construed to prohibit the department from granting general assistance benefits to alcoholics and drug addicts who are incapacitated due to other physical or mental conditions that meet the eligibility criteria for the general assistance program;

(iii) Are citizens or aliens lawfully admitted for permanent residence or otherwise residing in the United States under color of law; and

(iv) Have furnished the department their social security account number. If the social security account number cannot be furnished because it has not been issued or is not known, an application for a number shall be made prior to authorization of assistance, and the social security number shall be provided to the department upon receipt.

(b) Notwithstanding the provisions of subsection (6)(a)(i), (ii), and (c) of this section, general assistance shall be provided to the following recipients of federal-aid assistance:

(i) Recipients of supplemental security income whose need, as defined in this section, is not met by such supplemental security income grant because of separation from a spouse; or

(ii) To the extent authorized by the legislature in the biennial appropriations act, to recipients of temporary assistance for needy families whose needs are not being met because of a temporary reduction in monthly income below the entitled benefit payment level caused by loss or reduction of wages or unemployment compensation benefits or some other unforeseen circumstances. The amount of general assistance authorized shall not exceed the difference between the entitled benefit payment level and the amount of income actually received.

(c) General assistance shall be provided only to persons who are not members of assistance units receiving federal aid assistance, except as provided in subsection (6)(a)(ii)(A) and (b) of this section, and will accept available services which can reasonably be expected to enable the person to work or reduce the need for assistance unless there is good cause to refuse. Failure to accept such services shall result in termination until the person agrees to cooperate in accepting such services and subject to the following maximum periods of ineligibility after reapplication:

(i) First failure: One week;

(ii) Second failure within six months: One month;

(iii) Third and subsequent failure within one year: Two months.

(d) Persons found eligible for general assistance based on incapacity from gainful employment may, if otherwise eligible, receive general assistance pending application for federal supplemental security income benefits. Any general assistance that is subsequently duplicated by the person's receipt of supplemental

security income for the same period shall be considered a debt due the state and shall by operation of law be subject to recovery through all available legal remedies.

(e) The department shall adopt by rule medical criteria for general assistance eligibility to ensure that eligibility decisions are consistent with statutory requirements and are based on clear, objective medical information.

(f) The process implementing the medical criteria shall involve consideration of opinions of the treating or consulting physicians or health care professionals regarding incapacity, and any eligibility decision which rejects uncontroverted medical opinion must set forth clear and convincing reasons for doing so.

(g) Recipients of general assistance based upon a finding of incapacity from gainful employment who remain otherwise eligible shall not have their benefits terminated absent a clear showing of material improvement in their medical or mental condition or specific error in the prior determination that found the recipient eligible by reason of incapacitation. Recipients of general assistance based upon pregnancy who relinquish their child for adoption, remain otherwise eligible, and are not eligible to receive benefits under the federal temporary assistance for needy families program shall not have their benefits terminated until the end of the month in which the period of six weeks following the birth of the recipient's child falls. Recipients of the federal temporary assistance for needy families program who lose their eligibility solely because of the birth and relinquishment of the qualifying child may receive general assistance through the end of the month in which the period of six weeks following the birth of the child falls.

(7) "Applicant"—Any person who has made a request, or on behalf of whom a request has been made, to any county or local office for assistance.

(8) "Recipient"—Any person receiving assistance and in addition those dependents whose needs are included in the recipient's assistance.

(9) "Standards of assistance"—The level of income required by an applicant or recipient to maintain a level of living specified by the department.

(10) "Resource"—Any asset, tangible or intangible, owned by or available to the applicant at the time of application, which can be applied toward meeting the applicant's need, either directly or by conversion into money or its equivalent: PROVIDED, That an applicant may retain the following described resources and not be ineligible for public assistance because of such resources.

(a) A home, which is defined as real property owned and used by an applicant or recipient as a place of residence, together with a reasonable amount of property surrounding and contiguous thereto, which is used by and useful to the applicant. Whenever a recipient shall cease to use such property for residential purposes, either for himself or herself or his or her dependents, the property shall be considered as a resource which can be made available to meet need, and if the recipient or his or her dependents absent themselves from the home for a period of ninety consecutive days such absence, unless due to hospitalization or health reasons or a natural disaster, shall raise a rebuttable presumption of abandonment:



PROVIDED, That if in the opinion of three physicians the recipient will be unable to return to the home during his or her lifetime, and the home is not occupied by a spouse or dependent children or disabled sons or daughters, such property shall be considered as a resource which can be made available to meet need.

(b) Household furnishings and personal effects and other personal property having great sentimental value to the applicant or recipient, as limited by the department consistent with limitations on resources and exemptions for federal aid assistance.

(c) A motor vehicle, other than a motor home, used and useful having an equity value not to exceed five thousand dollars.

(d) A motor vehicle necessary to transport a physically disabled household member. This exclusion is limited to one vehicle per physically disabled person.

(e) All other resources, including any excess of values exempted, not to exceed one thousand dollars or other limit as set by the department, to be consistent with limitations on resources and exemptions necessary for federal aid assistance. The department shall also allow recipients of temporary assistance for needy families to exempt savings accounts with combined balances of up to an additional three thousand dollars.

(f) Applicants for or recipients of general assistance shall have their eligibility based on resource limitations consistent with the temporary assistance for needy families program rules adopted by the department.

(g) If an applicant for or recipient of public assistance possesses property and belongings in excess of the ceiling value, such value shall be used in determining the need of the applicant or recipient, except that: (i) The department may exempt resources or income when the income and resources are determined necessary to the applicant's or recipient's restoration to independence, to decrease the need for public assistance, or to aid in rehabilitating the applicant or recipient or a dependent of the applicant or recipient; and (ii) the department may provide grant assistance for a period not to exceed nine months from the date the agreement is signed pursuant to this section to persons who are otherwise ineligible because of excess real property owned by such persons when they are making a good faith effort to dispose of that property: PROVIDED, That:

(A) The applicant or recipient signs an agreement to repay the lesser of the amount of aid received or the net proceeds of such sale;

(B) If the owner of the excess property ceases to make good faith efforts to sell the property, the entire amount of assistance may become an overpayment and a debt due the state and may be recovered pursuant to RCW 43.20B.630;

(C) Applicants and recipients are advised of their right to a fair hearing and afforded the opportunity to challenge a decision that good faith efforts to sell have ceased, prior to assessment of an overpayment under this section; and

(D) At the time assistance is authorized, the department files a lien without a sum certain on the specific property.

(11) "Income"—(a) All appreciable gains in real or personal property (cash or kind) or other assets, which are received by or become available for use and

enjoyment by an applicant or recipient during the month of application or after applying for or receiving public assistance. The department may by rule and regulation exempt income received by an applicant for or recipient of public assistance which can be used by him or her to decrease his or her need for public assistance or to aid in rehabilitating him or her or his or her dependents, but such exemption shall not, unless otherwise provided in this title, exceed the exemptions of resources granted under this chapter to an applicant for public assistance. In determining the amount of assistance to which an applicant or recipient of temporary assistance for needy families is entitled, the department is hereby authorized to disregard as a resource or income the earned income exemptions consistent with federal requirements. The department may permit the above exemption of earnings of a child to be retained by such child to cover the cost of special future identifiable needs even though the total exceeds the exemptions or resources granted to applicants and recipients of public assistance, but consistent with federal requirements. In formulating rules and regulations pursuant to this chapter, the department shall define income and resources and the availability thereof, consistent with federal requirements. All resources and income not specifically exempted, and any income or other economic benefit derived from the use of, or appreciation in value of, exempt resources, shall be considered in determining the need of an applicant or recipient of public assistance.

(b) If, under applicable federal requirements, the state has the option of considering property in the form of lump sum compensatory awards or related settlements received by an applicant or recipient as income or as a resource, the department shall consider such property to be a resource.

(12) "Need"—The difference between the applicant's or recipient's standards of assistance for himself or herself and the dependent members of his or her family, as measured by the standards of the department, and value of all nonexempt resources and nonexempt income received by or available to the applicant or recipient and the dependent members of his or her family.

(13) For purposes of determining eligibility for public assistance and participation levels in the cost of medical care, the department shall exempt restitution payments made to people of Japanese and Aleut ancestry pursuant to the Civil Liberties Act of 1988 and the Aleutian and Pribilof Island Restitution Act passed by congress, P.L. 100-383, including all income and resources derived therefrom.

(14) In the construction of words and phrases used in this title, the singular number shall include the plural, the masculine gender shall include both the feminine and neuter genders and the present tense shall include the past and future tenses, unless the context thereof shall clearly indicate to the contrary.

**Sec. 7.** RCW 74.04.300 and 1987 c 75 s 32 are each amended to read as follows:

If a recipient receives public assistance and/or food stamps or food stamp benefits transferred electronically for which ((he)) the recipient is not eligible, or receives public assistance and/or food stamps or food stamp benefits transferred

electronically in an amount greater than that for which ((he)) the recipient is eligible, the portion of the payment to which ((he)) the recipient is not entitled shall be a debt due the state recoverable under RCW 43.20B.030 and 43.20B.620 through 43.20B.645. It shall be the duty of recipients of public assistance and/or food stamps or food stamp benefits transferred electronically to notify the department within twenty days of the receipt or possession of all income or resources not previously declared to the department. The department shall advise applicants for assistance that failure to report as required, failure to reveal resources or income, and false statements will result in recovery by the state of any overpayment and may result in criminal prosecution.

**Sec. 8.** RCW 74.04.380 and 1979 c 141 s 313 are each amended to read as follows:

The secretary of social and health services, from funds appropriated to ((his)) the department for such purpose, shall, upon receipt of authorization from the governor, provide for the receiving, warehousing and distributing of federal and other surplus food commodities for the use and assistance of recipients of public assistance or other needy families and individuals certified as eligible to obtain such commodities. The secretary is authorized to enter into such agreements as may be necessary with the federal government or any state agency in order to participate in any program of distribution of surplus food commodities including but not limited to a food stamp or benefit program. The secretary shall hire personnel, establish distribution centers and acquire such facilities as may be required to carry out the intent of this section; and ((he)) the secretary may carry out any such program as a sole operation of the department or in conjunction or cooperation with any similar program of distribution by private individuals or organizations, any department of the state or any political subdivision of the state.

The secretary shall discontinue such program, or any part thereof, whenever in the determination of the governor such program, or any part thereof, is no longer in the best interest of the state.

**Sec. 9.** RCW 74.04.500 and 1991 c 126 s 3 are each amended to read as follows:

The department ((of social and health services)) is authorized to establish a food stamp or benefit program under the federal food stamp act of 1977, as amended.

**Sec. 10.** RCW 74.04.510 and 1981 1st ex.s. c 6 s 5 are each amended to read as follows:

The department shall ((promulgate)) adopt rules ((and regulations)) conforming to federal laws, rules, and regulations required to be observed in maintaining the eligibility of the state to receive from the federal government and to issue or distribute to recipients, food stamps ((or)), coupons, or food stamp or coupon benefits transferred electronically under a food stamp or benefits plan. Such rules ((and regulations)) shall relate to and include, but shall not be limited to: (1) The classifications of and requirements of eligibility of households to

receive food stamps (~~(or)~~), coupons(~~(-)~~), or food stamp or coupon benefits transferred electronically; and (2) the periods during which households shall be certified or recertified to be eligible to receive food stamps (~~(or)~~), coupons, or food stamp or coupon benefits transferred electronically under this plan.

**Sec. 11.** RCW 74.04.515 and 1991 c 126 s 4 are each amended to read as follows:

In administering the food stamp or benefits program, there shall be no discrimination against any applicant or recipient by reason of age, sex, handicap, religious creed, political beliefs, race, color, or national origin.

**Sec. 12.** RCW 74.04.520 and 1969 ex.s. c 172 s 8 are each amended to read as follows:

The provisions of RCW 74.04.060 relating to disclosure of information regarding public assistance recipients shall apply to recipients of food stamps or food stamp benefits transferred electronically.

**Sec. 13.** RCW 74.04.750 and 1981 2nd ex.s. c 10 s 1 are each amended to read as follows:

(1) Applicants and recipients under this title must satisfy all reporting requirements imposed by the department.

(2) The secretary shall have the discretion to consider: (a) Food stamp allotments or food stamp benefits transferred electronically and/or (b) rent or housing subsidies as income in determining eligibility for and assistance to be provided by public assistance programs. If the department considers food stamp allotments or food stamp benefits transferred electronically as income in determining eligibility for assistance, applicants or recipients for any grant assistance program must apply for and take all reasonable actions necessary to establish and maintain eligibility for food stamps or food stamp benefits transferred electronically.

**Sec. 14.** RCW 74.08.046 and 1982 c 127 s 1 are each amended to read as follows:

There is designated to be included in the public assistance payment level a monthly energy assistance allowance. The allowance shall be excluded from consideration as income for the purpose of determining eligibility and benefit levels of food stamp or benefits program recipients to the maximum extent exclusion is authorized by federal law. The allowance shall be calculated on a seasonal basis for the period of November 1st through April 30th.

**Sec. 15.** RCW 74.08.080 and 1997 c 59 s 12 are each amended to read as follows:

(1)(a) A public assistance applicant or recipient who is aggrieved by a decision of the department or an authorized agency of the department has the right to an adjudicative proceeding. A current or former recipient who is aggrieved by a department claim that he or she owes a debt for an overpayment of assistance

or food stamps or food stamp benefits transferred electronically, or both, has the right to an adjudicative proceeding.

(b) An applicant or recipient has no right to an adjudicative proceeding when the sole basis for the department's decision is a state or federal law that requires an assistance adjustment for a class of recipients.

(2) The adjudicative proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW, and this subsection.

(a) The applicant or recipient must file the application for an adjudicative proceeding with the secretary within ninety days after receiving notice of the aggrieving decision.

(b) The hearing shall be conducted at the local community services office or other location in Washington convenient to the appellant.

(c) The appellant or his or her representative has the right to inspect his or her department file and, upon request, to receive copies of department documents relevant to the proceedings free of charge.

(d) The appellant has the right to a copy of the tape recording of the hearing free of charge.

(e) The department is limited to recovering an overpayment arising from assistance being continued pending the adjudicative proceeding to the amount recoverable up to the sixtieth day after the secretary's receipt of the application for an adjudicative proceeding.

(f) If the final adjudicative order is made in favor of the appellant, assistance shall be paid from the date of denial of the application for assistance or thirty days following the date of application for temporary assistance for needy families or forty-five days after date of application for all other programs, whichever is sooner; or in the case of a recipient, from the effective date of the local community services office decision.

(g) This subsection applies only to an adjudicative proceeding in which the appellant is an applicant for or recipient of medical assistance or the limited casualty program for the medically needy and the issue is his or her eligibility or ineligibility due to the assignment or transfer of a resource. The burden is on the department to prove by a preponderance of the evidence that the person knowingly and willingly assigned or transferred the resource at less than market value for the purpose of qualifying or continuing to qualify for medical assistance or the limited casualty program for the medically needy. If the prevailing party in the adjudicative proceeding is the applicant or recipient, he or she is entitled to reasonable attorney's fees.

(3)~~((a)-(3))~~ When a person files a petition for judicial review as provided in RCW 34.05.514 of an adjudicative order entered in a public assistance program, no filing fee shall be collected from the person and no bond shall be required on any appeal. In the event that the superior court, the court of appeals, or the supreme court renders a decision in favor of the appellant, said appellant shall be entitled to reasonable ~~((attorney's))~~ attorneys' fees and costs. If a decision of the court is made in favor of the appellant, assistance shall be paid from date

of the denial of the application for assistance or thirty days after the application for temporary assistance for needy families or forty-five days following the date of application, whichever is sooner; or in the case of a recipient, from the effective date of the local community services office decision.

**Sec. 16.** RCW 74.08.331 and 1997 c 58 s 303 are each amended to read as follows:

Any person who by means of a willfully false statement, or representation, or impersonation, or a willful failure to reveal any material fact, condition, or circumstance affecting eligibility or need for assistance, including medical care, surplus commodities, and food stamps or food stamp benefits transferred electronically, as required by law, or a willful failure to promptly notify the county office in writing as required by law or any change in status in respect to resources, or income, or need, or family composition, money contribution and other support, from whatever source derived, including unemployment insurance, or any other change in circumstances affecting the person's eligibility or need for assistance, or other fraudulent device, obtains, or attempts to obtain, or aids or abets any person to obtain any public assistance to which the person is not entitled or greater public assistance than that to which he or she is justly entitled shall be guilty of grand larceny and upon conviction thereof shall be punished by imprisonment in a state correctional facility for not more than fifteen years.

Any person who by means of a willfully false statement or representation or by impersonation or other fraudulent device aids or abets in buying, selling, or in any other way disposing of the real property of a recipient of public assistance without the consent of the secretary shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by imprisonment for not more than one year in the county jail or a fine of not to exceed one thousand dollars or by both.

**Sec. 17.** RCW 74.25A.045 and 1997 c 59 s 31 are each amended to read as follows:

A local employment partnership council shall be established in each pilot project area to assist the department of social and health services in the administration of this chapter and to allow local flexibility in dealing with the particular needs of each pilot project area. Each council shall be primarily responsible for recruiting and encouraging participation of employment providers in the project site. Each council shall be composed of nine members who shall be appointed by the county legislative authority of the county in which the pilot project operates. Councilmembers shall be residents of or employers in the pilot project area in which they are appointed and shall serve three-year terms. The council shall have two members who are current or former recipients of the aid to families with dependent children or temporary assistance for needy families programs or food stamp or benefits program, two members who represent labor, and five members who represent the local business community. In addition, one person representing the local community service office of the department of social and health services, one person representing a community action agency or other

nonprofit service provider, and one person from a local city or county government shall serve as nonvoting members.

**Sec. 18.** RCW 82.08.0297 and 1987 c 28 s 1 are each amended to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of eligible foods which are purchased with coupons issued under the food stamp act of 1977 or food stamp or coupon benefits transferred electronically, notwithstanding anything to the contrary in RCW 82.08.0293.

When a purchase of eligible foods is made with a combination of coupons issued under the food stamp act of 1977 or food stamp or coupon benefits transferred electronically and cash, check, or similar payment, the cash, check, or similar payment shall be applied first to food products exempt from tax under RCW 82.08.0293 whenever possible.

As used in this section, "eligible foods" shall have the same meaning as that established under federal law for purposes of the food stamp act of 1977.

**Sec. 19.** RCW 82.12.0297 and 1987 c 28 s 2 are each amended to read as follows:

The provisions of this chapter shall not apply with respect to the use of eligible foods which are purchased with coupons issued under the food stamp act of 1977 or food stamp or coupon benefits transferred electronically, notwithstanding anything to the contrary in RCW 82.12.0293.

As used in this section, "eligible foods" shall have the same meaning as that established under federal law for purposes of the food stamp act of 1977.

Passed the House February 10, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

## CHAPTER 80

[Substitute House Bill 2634]

### DISQUALIFYING FUGITIVES FROM RECEIVING GENERAL ASSISTANCE

AN ACT Relating to disqualifying fugitives from receiving general assistance; and reenacting and amending RCW 74.04.005.

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

**Sec. 1.** RCW 74.04.005 and 1997 c 59 s 10 and 1997 c 58 s 309 are each reenacted and amended to read as follows:

For the purposes of this title, unless the context indicates otherwise, the following definitions shall apply:

(1) "Public assistance" or "assistance"—Public aid to persons in need thereof for any cause, including services, medical care, assistance grants, disbursing orders, work relief, general assistance and federal-aid assistance.

(2) "Department"—The department of social and health services.

(3) "County or local office"—The administrative office for one or more counties or designated service areas.

(4) "Director" or "secretary" means the secretary of social and health services.

(5) "Federal-aid assistance"—The specific categories of assistance for which provision is made in any federal law existing or hereafter passed by which payments are made from the federal government to the state in aid or in respect to payment by the state for public assistance rendered to any category of needy persons for which provision for federal funds or aid may from time to time be made, or a federally administered needs-based program.

(6)(a) "General assistance"—Aid to persons in need who:

(i) Are not eligible to receive federal-aid assistance, other than food stamps and medical assistance; however, an individual who refuses or fails to cooperate in obtaining federal-aid assistance, without good cause, is not eligible for general assistance;

(ii) Meet one of the following conditions:

(A) Pregnant: PROVIDED, That need is based on the current income and resource requirements of the federal temporary assistance for needy families program; or

(B) Subject to chapter 165, Laws of 1992, incapacitated from gainful employment by reason of bodily or mental infirmity that will likely continue for a minimum of ninety days as determined by the department.

(C) Persons who are unemployable due to alcohol or drug addiction are not eligible for general assistance. Persons receiving general assistance on July 26, 1987, or becoming eligible for such assistance thereafter, due to an alcohol or drug-related incapacity, shall be referred to appropriate assessment, treatment, shelter, or supplemental security income referral services as authorized under chapter 74.50 RCW. Referrals shall be made at the time of application or at the time of eligibility review. Alcoholic and drug addicted clients who are receiving general assistance on July 26, 1987, may remain on general assistance if they otherwise retain their eligibility until they are assessed for services under chapter 74.50 RCW. Subsection (6)(a)(ii)(B) of this section shall not be construed to prohibit the department from granting general assistance benefits to alcoholics and drug addicts who are incapacitated due to other physical or mental conditions that meet the eligibility criteria for the general assistance program;

(iii) Are citizens or aliens lawfully admitted for permanent residence or otherwise residing in the United States under color of law; and

(iv) Have furnished the department their social security account number. If the social security account number cannot be furnished because it has not been issued or is not known, an application for a number shall be made prior to authorization of assistance, and the social security number shall be provided to the department upon receipt.



(b) Notwithstanding the provisions of subsection (6)(a)(i), (ii), and (c) of this section, general assistance shall be provided to the following recipients of federal-aid assistance:

(i) Recipients of supplemental security income whose need, as defined in this section, is not met by such supplemental security income grant because of separation from a spouse; or

(ii) To the extent authorized by the legislature in the biennial appropriations act, to recipients of temporary assistance for needy families whose needs are not being met because of a temporary reduction in monthly income below the entitled benefit payment level caused by loss or reduction of wages or unemployment compensation benefits or some other unforeseen circumstances. The amount of general assistance authorized shall not exceed the difference between the entitled benefit payment level and the amount of income actually received.

(c) General assistance shall be provided only to persons who are not members of assistance units receiving federal aid assistance, except as provided in subsection (6)(a)(ii)(A) and (b) of this section, and will accept available services which can reasonably be expected to enable the person to work or reduce the need for assistance unless there is good cause to refuse. Failure to accept such services shall result in termination until the person agrees to cooperate in accepting such services and subject to the following maximum periods of ineligibility after reapplication:

(i) First failure: One week;

(ii) Second failure within six months: One month;

(iii) Third and subsequent failure within one year: Two months.

(d) Persons found eligible for general assistance based on incapacity from gainful employment may, if otherwise eligible, receive general assistance pending application for federal supplemental security income benefits. Any general assistance that is subsequently duplicated by the person's receipt of supplemental security income for the same period shall be considered a debt due the state and shall by operation of law be subject to recovery through all available legal remedies.

(e) The department shall adopt by rule medical criteria for general assistance eligibility to ensure that eligibility decisions are consistent with statutory requirements and are based on clear, objective medical information.

(f) The process implementing the medical criteria shall involve consideration of opinions of the treating or consulting physicians or health care professionals regarding incapacity, and any eligibility decision which rejects uncontroverted medical opinion must set forth clear and convincing reasons for doing so.

(g) Recipients of general assistance based upon a finding of incapacity from gainful employment who remain otherwise eligible shall not have their benefits terminated absent a clear showing of material improvement in their medical or mental condition or specific error in the prior determination that found the recipient eligible by reason of incapacitation. Recipients of general assistance based upon pregnancy who relinquish their child for adoption, remain otherwise

eligible, and are not eligible to receive benefits under the federal temporary assistance for needy families program shall not have their benefits terminated until the end of the month in which the period of six weeks following the birth of the recipient's child falls. Recipients of the federal temporary assistance for needy families program who lose their eligibility solely because of the birth and relinquishment of the qualifying child may receive general assistance through the end of the month in which the period of six weeks following the birth of the child falls.

(h) No person may be considered an eligible individual for general assistance with respect to any month if during that month the person:

(i) Is fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony, under the laws of the state of Washington or the place from which the person flees; or

(ii) Is violating a condition of probation, community supervision, or parole imposed under federal or state law for a felony or gross misdemeanor conviction.

(7) "Applicant"—Any person who has made a request, or on behalf of whom a request has been made, to any county or local office for assistance.

(8) "Recipient"—Any person receiving assistance and in addition those dependents whose needs are included in the recipient's assistance.

(9) "Standards of assistance"—The level of income required by an applicant or recipient to maintain a level of living specified by the department.

(10) "Resource"—Any asset, tangible or intangible, owned by or available to the applicant at the time of application, which can be applied toward meeting the applicant's need, either directly or by conversion into money or its equivalent: PROVIDED, That an applicant may retain the following described resources and not be ineligible for public assistance because of such resources.

(a) A home, which is defined as real property owned and used by an applicant or recipient as a place of residence, together with a reasonable amount of property surrounding and contiguous thereto, which is used by and useful to the applicant. Whenever a recipient shall cease to use such property for residential purposes, either for himself or herself or his or her dependents, the property shall be considered as a resource which can be made available to meet need, and if the recipient or his or her dependents absent themselves from the home for a period of ninety consecutive days such absence, unless due to hospitalization or health reasons or a natural disaster, shall raise a rebuttable presumption of abandonment: PROVIDED, That if in the opinion of three physicians the recipient will be unable to return to the home during his or her lifetime, and the home is not occupied by a spouse or dependent children or disabled sons or daughters, such property shall be considered as a resource which can be made available to meet need.

(b) Household furnishings and personal effects and other personal property having great sentimental value to the applicant or recipient, as limited by the department consistent with limitations on resources and exemptions for federal aid assistance.

(c) A motor vehicle, other than a motor home, used and useful having an equity value not to exceed five thousand dollars.

(d) A motor vehicle necessary to transport a physically disabled household member. This exclusion is limited to one vehicle per physically disabled person.

(e) All other resources, including any excess of values exempted, not to exceed one thousand dollars or other limit as set by the department, to be consistent with limitations on resources and exemptions necessary for federal aid assistance. The department shall also allow recipients of temporary assistance for needy families to exempt savings accounts with combined balances of up to an additional three thousand dollars.

(f) Applicants for or recipients of general assistance shall have their eligibility based on resource limitations consistent with the temporary assistance for needy families program rules adopted by the department.

(g) If an applicant for or recipient of public assistance possesses property and belongings in excess of the ceiling value, such value shall be used in determining the need of the applicant or recipient, except that: (i) The department may exempt resources or income when the income and resources are determined necessary to the applicant's or recipient's restoration to independence, to decrease the need for public assistance, or to aid in rehabilitating the applicant or recipient or a dependent of the applicant or recipient; and (ii) the department may provide grant assistance for a period not to exceed nine months from the date the agreement is signed pursuant to this section to persons who are otherwise ineligible because of excess real property owned by such persons when they are making a good faith effort to dispose of that property: PROVIDED, That:

(A) The applicant or recipient signs an agreement to repay the lesser of the amount of aid received or the net proceeds of such sale;

(B) If the owner of the excess property ceases to make good faith efforts to sell the property, the entire amount of assistance may become an overpayment and a debt due the state and may be recovered pursuant to RCW 43.20B.630;

(C) Applicants and recipients are advised of their right to a fair hearing and afforded the opportunity to challenge a decision that good faith efforts to sell have ceased, prior to assessment of an overpayment under this section; and

(D) At the time assistance is authorized, the department files a lien without a sum certain on the specific property.

(11) "Income"—(a) All appreciable gains in real or personal property (cash or kind) or other assets, which are received by or become available for use and enjoyment by an applicant or recipient during the month of application or after applying for or receiving public assistance. The department may by rule and regulation exempt income received by an applicant for or recipient of public assistance which can be used by him or her to decrease his or her need for public assistance or to aid in rehabilitating him or her or his or her dependents, but such exemption shall not, unless otherwise provided in this title, exceed the exemptions of resources granted under this chapter to an applicant for public assistance. In determining the amount of assistance to which an applicant or recipient of

temporary assistance for needy families is entitled, the department is hereby authorized to disregard as a resource or income the earned income exemptions consistent with federal requirements. The department may permit the above exemption of earnings of a child to be retained by such child to cover the cost of special future identifiable needs even though the total exceeds the exemptions or resources granted to applicants and recipients of public assistance, but consistent with federal requirements. In formulating rules and regulations pursuant to this chapter, the department shall define income and resources and the availability thereof, consistent with federal requirements. All resources and income not specifically exempted, and any income or other economic benefit derived from the use of, or appreciation in value of, exempt resources, shall be considered in determining the need of an applicant or recipient of public assistance.

(b) If, under applicable federal requirements, the state has the option of considering property in the form of lump sum compensatory awards or related settlements received by an applicant or recipient as income or as a resource, the department shall consider such property to be a resource.

(12) "Need"—The difference between the applicant's or recipient's standards of assistance for himself or herself and the dependent members of his or her family, as measured by the standards of the department, and value of all nonexempt resources and nonexempt income received by or available to the applicant or recipient and the dependent members of his or her family.

(13) For purposes of determining eligibility for public assistance and participation levels in the cost of medical care, the department shall exempt restitution payments made to people of Japanese and Aleut ancestry pursuant to the Civil Liberties Act of 1988 and the Aleutian and Pribilof Island Restitution Act passed by congress, P.L. 100-383, including all income and resources derived therefrom.

(14) In the construction of words and phrases used in this title, the singular number shall include the plural, the masculine gender shall include both the feminine and neuter genders and the present tense shall include the past and future tenses, unless the context thereof shall clearly indicate to the contrary.

Passed the House February 10, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

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## CHAPTER 81

[Engrossed House Bill 2791]

### METHAMPHETAMINE—CLEAN UP OF SITES

AN ACT Relating to methamphetamine; amending RCW 70.105D.070; reenacting and amending RCW 9.94A.030; and creating a new section.

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

*\*Sec. 1. RCW 9.94A.030 and 1997 c 365 s 1, 1997 c 340 s 4, 1997 c 339 s 1, 1997 c 338 s 2, 1997 c 144 s 1, and 1997 c 70 s 1 are each reenacted and amended to read as follows:*

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

*(1) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department of corrections, means that the department is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.*

*(2) "Commission" means the sentencing guidelines commission.*

*(3) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.*

*(4) "Community custody" means that portion of an inmate's sentence of confinement in lieu of earned early release time or imposed pursuant to RCW 9.94A.120 (6), (8), or (10) served in the community subject to controls placed on the inmate's movement and activities by the department of corrections.*

*(5) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned early release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.*

*(6) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.*

*(7) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.*

*(8) "Confinement" means total or partial confinement as defined in this section.*

*(9) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.*

**(10) "Court-ordered legal financial obligation"** means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to the provisions in RCW 38.52.430.

**(11) "Crime-related prohibition"** means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

**(12) "Criminal history"** means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (a) whether the defendant has been placed on probation and the length and terms thereof; and (b) whether the defendant has been incarcerated and the length of incarceration.

**(13) "Day fine"** means a fine imposed by the sentencing judge that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

**(14) "Day reporting"** means a program of enhanced supervision designed to monitor the defendant's daily activities and compliance with sentence conditions, and in which the defendant is required to report daily to a specific location designated by the department or the sentencing judge.

**(15) "Department"** means the department of corrections.

**(16) "Determinate sentence"** means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a legal financial obligation. The fact that an offender through "earned early release" can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

**(17) "Disposable earnings"** means that part of the earnings of an individual remaining after the deduction from those earnings of any amount required by

*law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.*

*(18) "Drug offense" means:*

*(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403);*

*(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or*

*(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.*

*(19) "Escape" means:*

*(a) Escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or*

*(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.*

*(20) "Felony traffic offense" means:*

*(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or*

*(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.*

*(21) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.*

*(22) "First-time offender" means any person who is convicted of a felony (a) not classified as a violent offense or a sex offense under this chapter, or (b) that is not the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug, nor the manufacture, delivery, or possession with intent to deliver methamphetamine, its salts, isomers, and salts of its isomers as defined in RCW 69.50.206(d)(2), nor the selling for profit of any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and*

*flowering tops of marihuana, who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.*

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

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

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

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Manufacture or possession of ephedrine or pseudoephedrine with intent to manufacture methamphetamine in or near a residence in which a minor or a pregnant woman resides;

(n) Promoting prostitution in the first degree;

~~((n))~~ (o) Rape in the third degree;

~~((o))~~ (p) Robbery in the second degree;

~~((p))~~ (q) Sexual exploitation;

~~((q))~~ (r) Vehicular assault;

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

~~((s))~~ (t) Any other class B felony offense with a finding of sexual motivation, as "sexual motivation" is defined under this section;

~~((t))~~ (u) Any other felony with a deadly weapon verdict under RCW 9.94A.125;

~~((u))~~ (v) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

~~((v))~~ (w)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;



(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.

(24) "Nonviolent offense" means an offense which is not a violent offense.

(25) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(26) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention as defined in this section.

(27) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.360; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree, with a finding of sexual motivation; or (C) an attempt to commit any crime listed in this subsection (27)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under

*subsection (27)(b)(i) only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under subsection (27)(b)(i) only when the offender was eighteen years of age or older when the offender committed the offense.*

*(28) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.*

*(29) "Restitution" means the requirement that the offender pay a specific sum of money over a specific period of time to the court as payment of damages. The sum may include both public and private costs. The imposition of a restitution order does not preclude civil redress.*

*(30) "Serious traffic offense" means:*

*(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or*

*(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.*

*(31) "Serious violent offense" is a subcategory of violent offense and means:*

*(a) Murder in the first degree, homicide by abuse, murder in the second degree, manslaughter in the first degree, assault in the first degree, kidnapping in the first degree, or rape in the first degree, assault of a child in the first degree, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or*

*(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.*

*(32) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.*

*(33) "Sex offense" means:*

*(a) A felony that is a violation of chapter 9A.44 RCW or RCW 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;*

*(b) A felony with a finding of sexual motivation under RCW 9.94A.127 or 13.40.135; or*

*(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.*

*(34) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.*

(35) *"Total confinement"* means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(36) *"Transition training"* means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(37) *"Victim"* means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(38) *"Violent offense"* means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, robbery in the second degree, drive-by shooting, vehicular assault, and vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(39) *"Work crew"* means a program of partial confinement consisting of civic improvement tasks for the benefit of the community of not less than thirty-five hours per week that complies with RCW 9.94A.135. The civic improvement tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. Only those offenders sentenced to a facility operated or utilized under contract by a county or the state are eligible to participate on a work crew. Offenders sentenced for a sex offense as defined in subsection (33) of this section are not eligible for the work crew program.

(40) *"Work ethic camp"* means an alternative incarceration program designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational

*experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.*

*(41) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility.*

*(42) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.*

\*Sec. 1 was vetoed. See message at end of chapter.

Sec. 2. RCW 70.105D.070 and 1997 c 406 s 5 are each amended to read as follows:

(1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2) The following moneys shall be deposited into the state toxics control account: (a) Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-three one-hundredths of one percent; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the account by the legislature. Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:

(i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;

(ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;

(iii) The hazardous waste cleanup program required under this chapter;

(iv) State matching funds required under the federal cleanup law;

(v) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;

(vii) Hazardous materials emergency response training;

(viii) Water and environmental health protection and monitoring programs;

(ix) Programs authorized under chapter 70.146 RCW;

(x) A public participation program, including regional citizen advisory committees;

(xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are

established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both (A) a substantially more expeditious or enhanced cleanup than would otherwise occur, and (B) the prevention or mitigation of unfair economic hardship; and

(xii) Development and demonstration of alternative management technologies designed to carry out the top two hazardous waste management priorities of RCW 70.105.150.

(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-seven one-hundredths of one percent.

(a) Moneys deposited in the local toxics control account shall be used by the department for grants or loans to local governments for the following purposes in descending order of priority: (i) Remedial actions; (ii) hazardous waste plans and programs under chapter 70.105 RCW; ~~((and))~~ (iii) solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW; and (iv) funds for a program to assist in the assessment and cleanup of sites of methamphetamine production, but not to be used for the initial containment of such sites, consistent with the responsibilities and intent of RCW 69.50.511. Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW.

(b) Funds may also be appropriated to the department of health to implement programs to reduce testing requirements under the federal safe drinking water act for public water systems. The department of health shall reimburse the account from fees assessed under RCW 70.119A.115 by June 30, 1995.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(5) One percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation from either account which are not expended at the close of any biennium shall revert to the state toxics control account.

(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation.

(7) The department shall adopt rules for grant or loan issuance and performance.

**NEW SECTION. Sec. 3.** If this act mandates an increased level of service by local governments, the local government may, under RCW 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the legislature. The claims shall be subject to verification by the office of financial management.

Passed the House March 7, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 20, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 20, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 1, Engrossed House Bill No. 2791 entitled:

"AN ACT Relating to methamphetamine;"

Section 1 of EHB 2791 defines as a "strike," under the Persistent Offender Accountability Act, the manufacture or possession of ephedrine or pseudoephedrine with intent to manufacture methamphetamine, when that crime occurs in or near a residence where a minor or pregnant woman resides. As I noted in vetoing a similar provision last year, we should not stray from the original intent of the three strikes law; the "strike" category should be reserved for the most serious violent and sex offenses, not for drug offenses. As dangerous as "meth labs" are, making possession of constituent chemicals a "strike" does little to protect public safety and opens the door to future inappropriate expansion of the "strike" list to other nonviolent conduct.

In addition, section 1 of EHB 2791 would not make it a "strike" to *operate* a "meth lab," only to possess the precursor chemicals from which methamphetamine is made with intent to use them for that purpose. Someone who is starting up a "meth lab" would be committing a "strike," while someone closing it down after producing the drug would not be. Moreover, it would be very difficult years from now, when offenders might be subject to life sentences on the third "strike," to identify the past cases in which a child or pregnant woman may have been present.

Representatives of law enforcement organizations have urged caution against the tendency to overreact with bills about crime. They believe it is more effective, and does more for public safety, to increase sentences for specific crimes in a measured, proportional way. That is what I proposed to the Legislature and signed into law today: House Bill No. 2628, doubling the standard sentence range for manufacturing methamphetamine.

For these reasons, I have vetoed section 1 of Engrossed House Bill No. 2791. With the exception of section 1, I am approving Engrossed House Bill No. 2791."

## CHAPTER 82

[Engrossed Senate Bill 6139]

### AMPHETAMINE—PENALTIES FOR MANUFACTURE AND DELIVERY

AN ACT Relating to amphetamine; amending RCW 69.50.401; reenacting and amending RCW 9.94A.320; prescribing penalties; and creating a new section.

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

**Sec. 1.** RCW 9.94A.320 and 1997 c 365 s 4, 1997 c 346 s 3, 1997 c 340 s 1, 1997 c 338 s 51, 1997 c 266 s 15, and 1997 c 120 s 5 are each reenacted and amended to read as follows:

## TABLE 2

## CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XV	Aggravated Murder 1 (RCW 10.95.020)
XIV	Murder 1 (RCW 9A.32.030) Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1))
XIII	Murder 2 (RCW 9A.32.050) Malicious explosion 2 (RCW 70.74.280(2)) Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120) Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073) Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
XI	Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076) Manslaughter 1 (RCW 9A.32.060)
X	Kidnapping 1 (RCW 9A.40.020) Child Molestation 1 (RCW 9A.44.083) Malicious explosion 3 (RCW 70.74.280(3)) Over 18 and deliver heroin or narcotic from Schedule I or II to someone under 18 (RCW 69.50.406) Leading Organized Crime (RCW 9A.82.060(1)(a)) Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
IX	Assault of a Child 2 (RCW 9A.36.130) Robbery 1 (RCW 9A.56.200) Explosive devices prohibited (RCW 70.74.180) Malicious placement of an explosive 2 (RCW 70.74.270(2)) Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406) Controlled Substance Homicide (RCW 69.50.415)

- Sexual Exploitation (RCW 9.68A.040)  
 Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))  
 Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII Arson I (RCW 9A.48.020)  
 Promoting Prostitution I (RCW 9A.88.070)  
 Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)  
 Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))  
 Manufacture, deliver, or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))  
Manufacture, deliver, or possess with intent to deliver amphetamine (RCW 69.50.401(a)(1)(ii))  
 Possession of ephedrine or pseudoephedrine with intent to manufacture methamphetamine (RCW 69.50.440)  
 Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)  
 Manslaughter 2 (RCW 9A.32.070)
- VII Burglary I (RCW 9A.52.020)  
 Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)  
 Introducing Contraband I (RCW 9A.76.140)  
 Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))  
 Child Molestation 2 (RCW 9A.44.086)  
 Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)  
 Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)  
 Involving a minor in drug dealing (RCW 69.50.401(f))



- Drive-by Shooting (RCW 9A.36.045)
- Unlawful Possession of a Firearm in the first degree (RCW 9A.1.040(1)(a))
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- VI Bribery (RCW 9A.68.010)
- Rape of a Child 3 (RCW 9A.44.079)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Incest 1 (RCW 9A.64.020(1))
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II (except heroin or cocaine) (RCW 69.50.401(a)(1)(i))
- Intimidating a Judge (RCW 9A.72.160)
- Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))
- Theft of a Firearm (RCW 9A.56.300)
- V Persistent prison misbehavior (RCW 9A.94.070)
- Criminal Mistreatment I (RCW 9A.42.020)
- Abandonment of dependent person I (RCW 9A.42.060)
- Rape 3 (RCW 9A.44.060)
- Sexual Misconduct with a Minor I (RCW 9A.44.093)
- Child Molestation 3 (RCW 9A.44.089)
- Kidnapping 2 (RCW 9A.40.030)
- Extortion 1 (RCW 9A.56.120)
- Incest 2 (RCW 9A.64.020(2))
- Perjury I (RCW 9A.72.020)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))

- Sexually Violating Human Remains (RCW 9A.44.105)
- Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
- Possession of a Stolen Firearm (RCW 9A.56.310)
- IV
  - Residential Burglary (RCW 9A.52.025)
  - Theft of Livestock 1 (RCW 9A.56.080)
  - Robbery 2 (RCW 9A.56.210)
  - Assault 2 (RCW 9A.36.021)
  - Escape 1 (RCW 9A.76.110)
  - Arson 2 (RCW 9A.48.030)
  - Commercial Bribery (RCW 9A.68.060)
  - Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
  - Malicious Harassment (RCW 9A.36.080)
  - Threats to Bomb (RCW 9.61.160)
  - Willful Failure to Return from Furlough (RCW 72.66.060)
  - Hit and Run—Injury Accident (RCW 46.52.020(4))
  - Hit and Run with Vessel—Injury Accident (RCW 88.12.155(3))
  - Vehicular Assault (RCW 46.61.522)
  - Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana, amphetamine, or methamphetamines) (RCW 69.50.401(a)(1) (iii) through (v))
  - Influencing Outcome of Sporting Event (RCW 9A.82.070)
  - Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
  - Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
- III
  - Criminal Gang Intimidation (RCW 9A.46.120)
  - Criminal Mistreatment 2 (RCW 9A.42.030)
  - Abandonment of dependent person 2 (RCW 9A.42.070)
  - Extortion 2 (RCW 9A.56.130)
  - Unlawful Imprisonment (RCW 9A.40.040)

- Assault 3 (RCW 9A.36.031)
- Assault of a Child 3 (RCW 9A.36.140)
- Custodial Assault (RCW 9A.36.100)
- Unlawful possession of firearm in the second degree (RCW 9A.41.040(1)(b))
- Harassment (RCW 9A.46.020)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- Burglary 2 (RCW 9A.52.030)
- Introducing Contraband 2 (RCW 9A.76.150)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Escape 2 (RCW 9A.76.120)
- Perjury 2 (RCW 9A.72.030)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))
- Intimidating a Public Servant (RCW 9A.76.180)
- Tampering with a Witness (RCW 9A.72.120)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(iii))
- Delivery of a material in lieu of a controlled substance (RCW 69.50.401(c))
- Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
- Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
- Theft of livestock 2 (RCW 9A.56.080)
- Securities Act violation (RCW 21.20.400)
- H** Unlawful Practice of Law (RCW 2.48.180)
- Malicious Mischief 1 (RCW 9A.48.070)
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Class B Felony Theft of Rental, Leased, or Lease-purchased Property (RCW 9A.56.096(4))
- Trafficking in Insurance Claims (RCW 48.30A.015)

- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- Health Care False Claims (RCW 48.80.030)
- Possession of controlled substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.401(d))
- Possession of phencyclidine (PCP) (RCW 69.50.401(d))
- Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
- Computer Trespass 1 (RCW 9A.52.110)
- Escape from Community Custody (RCW 72.09.310)
- 1 Theft 2 (RCW 9A.56.040)
- Class C Felony Theft of Rental, Leased, or Lease-purchased Property (RCW 9A.56.096(4))
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Forgery (RCW 9A.60.020)
- Taking Motor Vehicle Without Permission (RCW 9A.56.070)
- Vehicle Prowl 1 (RCW 9A.52.095)
- Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- Malicious Mischief 2 (RCW 9A.48.080)
- Reckless Burning 1 (RCW 9A.48.040)
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
- False Verification for Welfare (RCW 74.08.055)
- Forged Prescription (RCW 69.41.020)
- Forged Prescription for a Controlled Substance (RCW 69.50.403)
- Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Non-narcotic from Schedule I-V (except phencyclidine) (RCW 69.50.401(d))

Sec. 2. RCW 69.50.401 and 1997 c 71 s 2 are each amended to read as follows:

(a) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

(1) Any person who violates this subsection with respect to:

(i) a controlled substance classified in Schedule I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, or (A) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (B) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine;

(ii) amphetamine or methamphetamine, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, or (A) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (B) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost;

(iii) any other controlled substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iv) a substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(v) a substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(b) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess a counterfeit substance.

(1) Any person who violates this subsection with respect to:

(i) a counterfeit substance classified in Schedule I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(ii) a counterfeit substance which is methamphetamine, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(iii) any other counterfeit substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iv) a counterfeit substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(v) a counterfeit substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(c) It is unlawful, except as authorized in this chapter and chapter 69.41 RCW, for any person to offer, arrange, or negotiate for the sale, gift, delivery, dispensing, distribution, or administration of a controlled substance to any person and then sell, give, deliver, dispense, distribute, or administer to that person any other liquid, substance, or material in lieu of such controlled substance. Any person who violates this subsection is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(d) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a crime, and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both, except as provided for in subsection (e) of this section.

(e) Except as provided for in subsection (a)(1)(iii) of this section any person found guilty of possession of forty grams or less of marihuana shall be guilty of a misdemeanor.

(f) It is unlawful to compensate, threaten, solicit, or in any other manner involve a person under the age of eighteen years in a transaction unlawfully to manufacture, sell, or deliver a controlled substance. A violation of this subsection shall be punished as a class C felony punishable in accordance with RCW 9A.20.021.

This section shall not apply to offenses defined and punishable under the provisions of RCW 69.50.410.

**NEW SECTION.** Sec. 3. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.

Passed the Senate March 7, 1998.

Passed the House March 4, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

**CHAPTER 83**

[Engrossed House Bill 2707]

**SEX OFFENDERS IN INMATE WORK PROGRAMS—LIMITING ACCESS TO INFORMATION  
ABOUT PRIVATE INDIVIDUALS**

AN ACT Relating to sex offenders in inmate work programs; adding a new section to chapter 72.09 RCW; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 72.09 RCW to read as follows:

Administrators of work programs described in RCW 72.09.100 shall ensure that no inmate convicted of a sex offense as defined in chapter 9A.44 RCW obtains access to names, addresses, or telephone numbers of private individuals while performing his or her duties in an inmate work program.

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

Passed the House February 10, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

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**CHAPTER 84**

[Substitute House Bill 2710]

**IRRIGATION DISTRICTS—ADMINISTRATION**

AN ACT Relating to the administration of irrigation districts; and amending RCW 87.03.845 and 87.80.130.

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

**Sec. 1.** RCW 87.03.845 and 1993 c 235 s 2 are each amended to read as follows:

This section and RCW 87.03.847 through 87.03.855 provide the procedures by which a minor irrigation district may be merged into a major irrigation district as authorized by RCW 87.03.530(2).

To institute proceedings for such a merger, the board of directors of the minor district shall adopt a resolution requesting the board of directors of the major district to consider the merger, or proceedings for such a merger may be instituted by a petition requesting the board of directors of the major district to consider the merger, signed by ten owners of land within the minor district or five percent of the total number of landowners within the minor district, whichever is greater. However, if there are fewer than twenty owners of land within the minor irrigation district, the petition shall be signed by a majority of the landowners and filed with the board of directors of the major irrigation district.

The board of directors of the major irrigation district shall consider the request at the next regularly scheduled meeting of the board of directors of the major district following its receipt of the minor district's request or at a special

meeting called for the purpose of considering the request. If the board of the major district denies the request of the minor district, no further action on the request shall be taken.

If the board of the major district does not deny the request, it shall conduct a public hearing on the request and shall give notice regarding the hearing. The notice shall describe the proposed merger and shall be published once a week for two consecutive weeks preceding the date of the hearing and the last publication shall be not more than seven days before the date of the hearing. The notice shall contain a statement that unless the holders of title or evidence of title to at least twenty percent of the assessed lands within the major district file a protest opposing the merger with the board of the major district at or before the hearing, the board is free to approve the request for the merger without an election being conducted in the major district on the request. If the board of the major district is considering requests from more than one minor district, the hearing shall be conducted on all such requests.

**Sec. 2.** RCW 87.80.130 and 1996 c 320 s 11 are each amended to read as follows:

(1) A board of joint control created under the provisions of this chapter shall have full authority within its area of jurisdiction to enter into and perform any and all necessary contracts; to accept grants and loans, including, but not limited to, those provided under chapters 43.83B and 43.99E RCW, to appoint and employ and discharge the necessary officers, agents, and employees; to sue and be sued as a board but without personal liability of the members thereof in any and all matters in which all the irrigation entities represented on the board as a whole have a common interest without making the irrigation entities parties to the suit; to represent the entities in all matters of common interest as a whole within the scope of this chapter; and to do any and all lawful acts required and expedient to carry out the purposes of this chapter. A board of joint control may, subject to the same limitations as an irrigation district operating under chapter 87.03 RCW, acquire any property or property rights for use within the board's area of jurisdiction by power of eminent domain; acquire, purchase, or lease in its own name all necessary real or personal property or property rights; and sell, lease, or exchange any surplus real or personal property or property rights. Any transfers of water, however, are limited to transfers authorized under subsection (2) of this section.

(2) A board of joint control is authorized and encouraged to pursue conservation and system efficiency improvements to optimize the use of appropriated waters and to either redistribute the saved water within its area of jurisdiction, or, transfer the water to others, or both. A redistribution of saved water as an operational practice internal to the board of joint control's area of jurisdiction, may be authorized if it can be made without detriment or injury to rights existing outside of the board of control's area of jurisdiction, including instream flow water rights established under state or federal law. Prior to undertaking a water conservation or system efficiency improvement project which



will result in a redistribution of saved water, the board of joint control must consult with the department of ecology and if the board's jurisdiction is within a United States reclamation project the board must obtain the approval of the bureau of reclamation. The purpose of such consultation is to assure that the proposal will not impair the rights of other water holders or bureau of reclamation contract water users. A board of control does not have the power to authorize a change of any water right that would change the point or points of diversion, purpose of use, or place of use outside the board's area of jurisdiction, without the approval of the department of ecology pursuant to RCW 90.03.380 and if the board's jurisdiction is within a United States reclamation project, the approval of the bureau of reclamation.

(3) A board of joint control is authorized to design, construct, and operate either drainage projects, or water quality enhancement projects, or both.

(4) Where the board of joint control area of jurisdiction is totally within a federal reclamation project, the board is authorized to accept operational responsibility for federal reserved works.

(5) Nothing contained in this chapter gives a board of joint control the authority to abridge the existing rights, responsibilities, and authorities of an individual irrigation entity or others within the area of jurisdiction; nor in a case where the board of joint control consists of representatives of two or more divisions of a federal reclamation project shall the board of joint control abridge any powers of an existing board of control created through federal contract; nor shall a board of joint control have any authority to abridge or modify a water right benefiting lands within its area of jurisdiction without consent of the party holding the ownership interest in the water right.

(6) A board of joint control created under this chapter may not use any authority granted to it by this chapter or by RCW 90.03.380 to authorize a transfer of or change in a water right or to authorize a redistribution of saved water before July 1, 1997.

Passed the House March 9, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

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## CHAPTER 85

[House Bill 2788]

### NURSING ASSISTANT TRAINING

AN ACT Relating to nursing assistant training; and amending RCW 74.39A.050.

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

**Sec. 1.** RCW 74.39A.050 and 1997 c 392 s 209 are each amended to read as follows:

The department's system of quality improvement for long-term care services shall use the following principles, consistent with applicable federal laws and regulations:

(1) The system shall be client-centered and promote privacy, independence, dignity, choice, and a home or home-like environment for consumers consistent with chapter 392, Laws of 1997.

(2) The goal of the system is continuous quality improvement with the focus on consumer satisfaction and outcomes for consumers. This includes that when conducting licensing inspections, the department shall interview an appropriate percentage of residents, family members, resident managers, and advocates in addition to interviewing providers and staff.

(3) Providers should be supported in their efforts to improve quality and address identified problems initially through training, consultation, technical assistance, and case management.

(4) The emphasis should be on problem prevention both in monitoring and in screening potential providers of service.

(5) Monitoring should be outcome based and responsive to consumer complaints and a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to providers.

(6) Prompt and specific enforcement remedies shall also be implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160, chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a contract or license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(7) To the extent funding is available, all long-term care staff directly responsible for the care, supervision, or treatment of vulnerable persons should be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis according to law and rules adopted by the department.

(8) No provider or staff, or prospective provider or staff, with a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.

(9) Under existing funds the department shall establish internally a quality improvement standards committee to monitor the development of standards and to suggest modifications.

(10) Within existing funds, the department shall design, develop, and implement a long-term care training program that is flexible, relevant, and qualifies towards the requirements for a nursing assistant certificate as established under chapter 18.88A RCW. This subsection does not require completion of the nursing assistant certificate training program by providers or their staff. The long-term care teaching curriculum must consist of a fundamental module, or modules, and a range of other available relevant training modules that provide the caregiver with appropriate options that assist in meeting the resident's care needs. Some of the training modules may include, but are not limited to, specific training on the special care needs of persons with developmental disabilities, dementia, mental illness, and the care needs of the elderly. No less than one training module must be dedicated to workplace violence prevention. The nursing care quality assurance commission shall work together with the department to develop the curriculum modules ~~((and))~~. The nursing care quality assurance commission shall direct the nursing assistant training programs to accept some or all of the skills and competencies from the curriculum modules ~~((hour for hour))~~ towards meeting the requirements for a nursing assistant certificate as defined in chapter 18.88A RCW. A process may be developed to test persons completing modules from a caregiver's class to verify that they have the transferable skills and competencies for entry into a nursing assistant training program. The department may review whether facilities can develop their own related long-term care training programs. The department may develop a review process for determining what previous experience and training may be used to waive some or all of the mandatory training. The department of social and health services and the nursing care quality assurance commission shall work together to develop an implementation plan by December 12, 1998.

Passed the House February 10, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

## CHAPTER 86

[Substitute House Bill 2790]

### RESTITUTION HEARINGS FOR JUVENILE OFFENDERS—TIMING

AN ACT Relating to restitution hearings for juvenile offenders; amending RCW 13.40.150; and providing an effective date.

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

Sec. I. RCW 13.40.150 and 1997 c 338 s 24 are each amended to read as follows:

(1) In disposition hearings all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though such evidence may not be admissible in a hearing on the information. The youth or the youth's counsel and the prosecuting attorney shall be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making reports when such individuals are reasonably available, but sources of confidential information need not be disclosed. The prosecutor and counsel for the juvenile may submit recommendations for disposition.

(2) For purposes of disposition:

- (a) Violations which are current offenses count as misdemeanors;
- (b) Violations may not count as part of the offender's criminal history;
- (c) In no event may a disposition for a violation include confinement.

(3) Before entering a dispositional order as to a respondent found to have committed an offense, the court shall hold a disposition hearing, at which the court shall:

(a) Consider the facts supporting the allegations of criminal conduct by the respondent;

(b) Consider information and arguments offered by parties and their counsel;

(c) Consider any predisposition reports;

(d) Consult with the respondent's parent, guardian, or custodian on the appropriateness of dispositional options under consideration and afford the respondent and the respondent's parent, guardian, or custodian an opportunity to speak in the respondent's behalf;

(e) Allow the victim or a representative of the victim and an investigative law enforcement officer to speak;

(f) Determine the amount of restitution owing to the victim, if any, or set a hearing for a later date not to exceed one hundred eighty days from the date of the disposition hearing to determine the amount, except that the court may continue the hearing beyond the one hundred eighty days for good cause;

(g) Determine the respondent's offender score;

(h) Consider whether or not any of the following mitigating factors exist:

(i) The respondent's conduct neither caused nor threatened serious bodily injury or the respondent did not contemplate that his or her conduct would cause or threaten serious bodily injury;

(ii) The respondent acted under strong and immediate provocation;

(iii) The respondent was suffering from a mental or physical condition that significantly reduced his or her culpability for the offense though failing to establish a defense;

(iv) Prior to his or her detection, the respondent compensated or made a good faith attempt to compensate the victim for the injury or loss sustained; and

(v) There has been at least one year between the respondent's current offense and any prior criminal offense;

(i) Consider whether or not any of the following aggravating factors exist:

- (i) In the commission of the offense, or in flight therefrom, the respondent inflicted or attempted to inflict serious bodily injury to another;
  - (ii) The offense was committed in an especially heinous, cruel, or depraved manner;
  - (iii) The victim or victims were particularly vulnerable;
  - (iv) The respondent has a recent criminal history or has failed to comply with conditions of a recent dispositional order or diversion agreement;
  - (v) The current offense included a finding of sexual motivation pursuant to RCW 13.40.135;
  - (vi) The respondent was the leader of a criminal enterprise involving several persons;
  - (vii) There are other complaints which have resulted in diversion or a finding or plea of guilty but which are not included as criminal history; and
  - (viii) The standard range disposition is clearly too lenient considering the seriousness of the juvenile's prior adjudications.
- (4) The following factors may not be considered in determining the punishment to be imposed:
- (a) The sex of the respondent;
  - (b) The race or color of the respondent or the respondent's family;
  - (c) The creed or religion of the respondent or the respondent's family;
  - (d) The economic or social class of the respondent or the respondent's family;
- and
- (e) Factors indicating that the respondent may be or is a dependent child within the meaning of this chapter.
- (5) A court may not commit a juvenile to a state institution solely because of the lack of facilities, including treatment facilities, existing in the community.

**NEW SECTION.** Sec. 2. This act takes effect July 1, 1998.

Passed the House February 10, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

## CHAPTER 87

[Engrossed Substitute House Bill 2819]

### VEHICLE USE ON DEPARTMENT OF FISH AND WILDLIFE LANDS—PERMITS

AN ACT Relating to vehicle use on department of fish and wildlife lands; amending RCW 77.32.380 and 77.12.170; prescribing penalties; and providing an effective date.

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

**Sec. 1.** RCW 77.32.380 and 1993 sp.s. c 2 s 77 are each amended to read as follows:

(1) Persons (~~sixteen years of age or older~~) who enter upon or use clearly identified department (~~lands and~~) improved access facilities (~~are~~) with a motor

vehicle may be required to ((possess a conservation license or a hunting, fishing, trapping, or free license on their person while using the facilities)) display a current annual fish and wildlife lands vehicle use permit on the motor vehicle while within or while using an improved access facility. An "improved access facility" is a clearly identified area specifically created for motor vehicle parking, and includes any boat launch or boat ramp associated with the parking area, but does not include the department parking facilities at the Gorge Concert Center near George, Washington. The vehicle use permit is issued in the form of a decal. One decal shall be issued at no charge with each annual saltwater, freshwater, combination, small game hunting, big game hunting, and trapping license issued by the department. The annual fee for ((this license)) a fish and wildlife lands vehicle use permit, if purchased separately, is ten dollars ((annually)). A person to whom the department has issued a decal or who has purchased a vehicle use permit separately may purchase a decal from the department for each additional vehicle owned by the person at a cost of five dollars per decal upon a showing of proof to the department that the person owns the additional vehicle or vehicles. Revenue derived from the sale of fish and wildlife lands vehicle use permits shall be used solely for the stewardship and maintenance of department improved access facilities. Revenue derived from the sale of fish and wildlife lands vehicle use permits shall be used solely for the stewardship and maintenance of department improved access facilities.

~~((The spouse, all children under eighteen years of age, and guests under eighteen years of age of the holder of a valid conservation license may use department lands and access facilities when accompanied by the license holder.))~~

Youth groups may use department ((lands and game)) improved access facilities without possessing a ((conservation license)) vehicle use permit when accompanied by a ((license)) vehicle use permit holder.

The department may accept contributions into the state wildlife fund for the sound stewardship of fish and wildlife. Contributors shall be known as "conservation patrons" and, for contributions of twenty dollars or more, shall receive a fish and wildlife lands vehicle use permit free of charge.

~~((The conservation license is nontransferable and must be validated by the signature of the holder. Upon request of a wildlife agent or ex officio wildlife agent a person using clearly identified department lands shall exhibit the required license.))~~

(2) The decal must be affixed in a permanent manner to the motor vehicle before entering upon or using the motor vehicle on a department improved access facility, and must be displayed on the rear window of the motor vehicle, or, if the motor vehicle does not have a rear window, on the rear of the motor vehicle.

(3) Failure to display the fish and wildlife lands vehicle use permit if required by this section is an infraction under chapter 7.84 RCW, and department employees are authorized to issue a notice of infraction to the registered owner of any motor vehicle entering upon or using a department improved access facility

without such a decal. The penalty for failure to display or improper display of the decal is sixty-six dollars.

**Sec. 2.** RCW 77.12.170 and 1996 c 101 s 7 are each amended to read as follows:

(1) There is established in the state treasury the state wildlife fund which consists of moneys received from:

- (a) Rentals or concessions of the department;
- (b) The sale of real or personal property held for department purposes;
- (c) The sale of licenses, permits, tags, stamps, and punchcards required by this title;
- (d) Fees for informational materials published by the department;
- (e) Fees for personalized vehicle license plates as provided in chapter 46.16 RCW;
- (f) Articles or wildlife sold by the director under this title;
- (g) Compensation for wildlife losses or contributions, gifts, or grants received under RCW 77.12.320 or 77.32.380;
- (h) Excise tax on anadromous game fish collected under chapter 82.27 RCW;
- (i) The sale of personal property seized by the department for wildlife violations; and
- (j) The department's share of revenues from auctions and raffles authorized by the commission.

(2) State and county officers receiving any moneys listed in subsection (1) of this section shall deposit them in the state treasury to be credited to the state wildlife fund.

**NEW SECTION.** **Sec. 3.** This act takes effect January 1, 1999.

Passed the House March 9, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

## CHAPTER 88

[Engrossed Substitute House Bill 2900]

### PRO RATA CALCULATION OF TEMPORARY ASSISTANCE FOR NEDDY FAMILIES GRANTS

AN ACT Relating to pro rata calculation of temporary assistance for needy families grants; adding a new section to chapter 74.08A RCW; and providing an expiration date.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 74.08A RCW to read as follows:

(1) The department shall study and report on the feasibility of adopting a pro rata calculation for grant amounts. The study shall include but not be limited to the following: (a) The benefits and difficulties regarding implementation; (b) the

fiscal impact; (c) appropriate good cause exceptions; (d) methods and rules for preventing abuse of the exceptions; (e) recommendations on alternative calculation systems.

(2) The department shall report its findings to the children and family services committee of house of representatives and to the human services and corrections committee of the senate by November 30, 1998.

(3) For the purpose of this section "pro rata" shall refer to a benefit calculation system in which a recipient's grant amount for any month reflects the recipient's participation in any required work activity, including a reduction in the grant amount for the number of work units or work activity units required by the department under P.L. 104-193 and this chapter that the recipient fails to perform.

(4) This section expires December 31, 1998.

Passed the House February 13, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

## CHAPTER 89

[Engrossed Substitute House Bill 2901]

### WORKFIRST PROGRAM—JOB SEARCH COMPONENT

AN ACT Relating to creating a job search component within the WorkFirst program; and adding a new section to chapter 74.08A RCW.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 74.08A RCW to read as follows:

The WorkFirst program operated by the department to meet the federal work requirements specified in P.L. 104-193 shall contain a job search component. The component shall consist of instruction on how to secure a job and assisted job search activities to locate and retain employment. Nonexempt recipients of temporary assistance for needy families shall participate in an initial job search for no more than twelve consecutive weeks. The recipient's ability to obtain employment will be reviewed within the first four weeks of job search and periodically thereafter and, if it is clear at any time that further participation in a job search will not be productive, the department shall assess the recipient pursuant to RCW 74.08A.260. The department shall refer recipients unable to find employment through the initial job search period to work activities that will develop their skills or knowledge to make them more employable, including additional job search and job readiness assistance.

Passed the House February 13, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.



## CHAPTER 90

[Substitute House Bill 2960]

## SOLID WASTE RECYCLING FACILITIES—PERMIT-BY-RULE PROCESS

AN ACT Relating to a permit-by-rule process for solid waste recycling facilities; amending RCW 70.95.020 and 70.95.210; and creating a new section.

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

**Sec. 1.** RCW 70.95.020 and 1985 c 345 s 2 are each amended to read as follows:

The purpose of this chapter is to establish a comprehensive state-wide program for solid waste handling, and solid waste recovery and/or recycling which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of this state. To this end it is the purpose of this chapter:

(1) To assign primary responsibility for adequate solid waste handling to local government, reserving to the state, however, those functions necessary to assure effective programs throughout the state;

(2) To provide for adequate planning for solid waste handling by local government;

(3) To provide for the adoption and enforcement of basic minimum performance standards for solid waste handling;

(4) To encourage the development and operation of waste recycling facilities needed to accomplish the management priority of waste recycling, and to promote consistency in the requirements for such facilities throughout the state;

(5) To provide technical and financial assistance to local governments in the planning, development, and conduct of solid waste handling programs;

~~((5))~~ (6) To encourage storage, proper disposal, and recycling of discarded vehicle tires and to stimulate private recycling programs throughout the state.

It is the intent of the legislature that local governments be encouraged to use the expertise of private industry and to contract with private industry to the fullest extent possible to carry out solid waste recovery and/or recycling programs.

**NEW SECTION. Sec. 2.** The department of ecology, in conjunction with the state solid waste advisory committee, shall continue to refine their recommendations produced pursuant to the comprehensive review of the state's solid waste system required under section 6, chapter 213, Laws of 1997. The department shall submit a report containing the refined recommendations to the appropriate legislative committees by December 1, 1998. In refining these recommendations, the department shall address:

(1) The applicability of a permit-by-rule process for solid waste recycling facilities;

(2) Consistency of permitting for regional, multijurisdictional recycling facilities;

(3) The application of best available control technology on a consistent basis, so that similar recycling facilities are subject to the same requirements; and

(4) Methods of integrating facility standards with the recommendations from the study.

Sec. 3. RCW 70.95.210 and 1987 c 109 s 21 are each amended to read as follows:

Whenever the jurisdictional health department denies a permit or suspends a permit for a solid waste disposal site, it shall, upon request of the applicant or holder of the permit, grant a hearing on such denial or suspension within thirty days after the request therefor is made. Notice of the hearing shall be given all interested parties including the county or city having jurisdiction over the site and the department. Within thirty days after the hearing, the health officer shall notify the applicant or the holder of the permit in writing of his determination and the reasons therefor. Any party aggrieved by such determination may appeal to the pollution control hearings board by filing with the hearings board a notice of appeal within thirty days after receipt of notice of the determination of the health officer. The hearings board shall hold a hearing in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW(~~as now or hereafter amended~~), If the jurisdictional health department denies a permit renewal or suspends a permit for an operating waste recycling facility that receives waste from more than one city or county, and the applicant or holder of the permit requests a hearing or files an appeal under this section, the permit denial or suspension shall not be effective until the completion of the appeal process under this section, unless the jurisdictional health department declares that continued operation of the waste recycling facility poses a very probable threat to human health and the environment.

Passed the House March 9, 1998.  
Passed the Senate March 3, 1998.  
Approved by the Governor March 20, 1998.  
Filed in Office of Secretary of State March 20, 1998.

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**CHAPTER 91**

[House Bill 2965]

**CRIME VICTIMS' COMPENSATION PROGRAM—  
DESIGNATING SPECIAL ATTORNEYS GENERAL**

AN ACT Relating to designating special assistant attorneys general for the crime victims' compensation program; and amending RCW 7.68.050.

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

Sec. 1. RCW 7.68.050 and 1980 c 156 s 3 are each amended to read as follows:

(1) No right of action at law for damages incurred as a consequence of a criminal act shall be lost as a consequence of being entitled to benefits under the provisions of this chapter. The victim or his beneficiary may elect to seek damages from the person or persons liable for the claimed injury or death, and such victim or beneficiary is entitled to the full compensation and benefits

provided by this chapter regardless of any election or recovery made pursuant to this section.

(2) For the purposes of this section, the rights, privileges, responsibilities, duties, limitations, and procedures contained in RCW 51.24.050 through ~~((51.24.100 as now existing or hereafter amended))~~ 51.24.110 apply.

(3) If the recovery involved is against the state, the lien of the department includes the interest on the benefits paid by the department to or on behalf of such person under this chapter computed at the rate of eight percent per annum from the date of payment.

(4) The 1980 amendments to this section apply only to injuries which occur on or after April 1, 1980.

Passed the House February 10, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

## CHAPTER 92

[House Bill 2990]

### BOARDING HOMES—PILOT PROJECT FOR THIRD-PARTY ACCREDITATION

AN ACT Relating to a pilot project for third-party accreditation of boarding homes; and creating a new section.

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

**NEW SECTION.** Sec. 1. (1) The legislature recognizes the need to involve the boarding home industry, the consumers of assisted living and retirement services, the long-term care ombudsman, and state regulatory agencies in the collaborative process of developing standards and procedures for accreditation of licensed boarding homes. As participants, consumers can help develop standards that more closely address their needs and make the accreditation of boarding home providers more meaningful to them when choosing among competitors. Providers can maintain flexibility in the marketplace and more quickly recognize and respond to the changing needs of its client base. Regulatory agencies can save money and remain assured that performance standards are high. For these reasons, the legislature finds that it is in the best interests of the boarding home industry, boarding home consumers, and state regulatory agencies to support an industry-funded pilot program prior to changing or developing new standards for boarding home regulation.

(2) A coalition of assisted living providers represented by state-wide assisted living professional trade associations, the long-term care ombudsman, state regulatory agencies, and consumer groups representing, but not limited to, the assisted living clientele such as the senior lobby, the American association of retired persons, and the alzheimer's association shall develop a plan for implementing a pilot program for the third-party accreditation of boarding homes licensed under RCW 18.20.020. The pilot plan must be funded by the assisted

living federation of America. The plan shall review the overall feasibility of implementation, cost or savings to the regulating agency, impact on client health, safety, quality of care, quality of life, and financial and other impacts to the boarding home industry. The pilot third-party boarding home accreditation plan shall be presented to the appropriate committees of the house of representatives and the senate by January 4, 1999.

Passed the House February 12, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

## CHAPTER 93

[House Bill 3103]

### PRENATAL NEWBORN SCREENING FOR EXPOSURE TO HARMFUL DRUGS

AN ACT Relating to prenatal newborn screening for exposure to harmful drugs; adding a new chapter to Title 70 RCW; and creating a new section.

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

**NEW SECTION.** Sec. 1. The policy of the state of Washington is to make every effort to detect as early as feasible and to prevent where possible preventable disorders resulting from parental use of alcohol and drugs.

**NEW SECTION.** Sec. 2. The department of health, in consultation with appropriate medical professionals, shall develop screening criteria for use in identifying pregnant or lactating women addicted to drugs or alcohol who are at risk of producing a drug-affected baby. The department shall also develop training protocols for medical professionals related to the identification and screening of women at risk of producing a drug-affected baby.

**NEW SECTION.** Sec. 3. The department of health shall investigate the feasibility of medical protocols for laboratory testing or other screening of newborn infants for exposure to alcohol or drugs. The department of health shall consider how to improve the current system with respect to testing, considering such variables as whether such testing is available, its cost, which entity is currently responsible for ordering testing, and whether testing should be mandatory or targeted.

**NEW SECTION.** Sec. 4. The department of health shall report to the appropriate legislative committees on its findings under sections 2 and 3 of this act by December 1, 1998.

**NEW SECTION.** Sec. 5. Sections 1 through 3 of this act constitute a new chapter in Title 70 RCW.

Passed the House February 12, 1998.  
 Passed the Senate March 3, 1998.  
 Approved by the Governor March 20, 1998.  
 Filed in Office of Secretary of State March 20, 1998.

## CHAPTER 94

[Engrossed Senate Bill 5499]

### ASSAULT ON BUS DRIVERS—PENALTIES

AN ACT Relating to assault on bus drivers; amending RCW 9A.36.031; and prescribing penalties.

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

**Sec. 1.** RCW 9A.36.031 and 1997 c 172 s 1 are each amended to read as follows:

(1) A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree:

(a) With intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of himself or another person, assaults another; or

(b) Assaults a person employed as a transit operator or driver by a public or private transit company while that person is ~~((operating or is in control of a vehicle that is owned or operated by the transit company and that is occupied by one or more passengers))~~ performing his or her official duties at the time of the assault; or

(c) Assaults a school bus driver employed by a school district or a private company under contract for transportation services with a school district while the driver is ~~((operating or is in control of a school bus that is occupied by one or more passengers))~~ performing his or her official duties at the time of the assault; or

(d) With criminal negligence, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm; or

(e) Assaults a fire fighter or other employee of a fire department, county fire marshal's office, county fire prevention bureau, or fire protection district who was performing his or her official duties at the time of the assault; or

(f) With criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering; or

(g) Assaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault; or

(h) Assaults a nurse, physician, or health care provider who was performing his or her nursing or health care duties at the time of the assault. For purposes of this subsection: "Nurse" means a person licensed under chapter 18.79 RCW; "physician" means a person licensed under chapter 18.57 or 18.71 RCW; and "health care provider" means a person certified under chapter 18.71 or 18.73 RCW who performs emergency medical services or a person regulated under Title

18 RCW and employed by, or contracting with, a hospital licensed under chapter 70.41 RCW.

(2) Assault in the third degree is a class C felony.

Passed the Senate January 30, 1998.

Passed the House March 5, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

## CHAPTER 95

[Substitute Senate Bill 5517]

### GOVERNING BOARDS OF THE STATE'S INSTITUTIONS OF HIGHER EDUCATION— STUDENT MEMBERSHIP

AN ACT Relating to the membership of the governing boards of the state's institutions of higher education; and amending RCW 28B.20.100, 28B.30.100, 28B.35.100, and 28B.40.100.

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

**Sec. 1.** RCW 28B.20.100 and 1985 c 61 s 1 are each amended to read as follows:

(1) The governance of the University of Washington shall be vested in a board of regents to consist of ~~((nine))~~ ten members, one of whom shall be a student. The governor shall select the student member from a list of candidates, of at least three and not more than five, submitted by the governing body of the associated students. They shall be appointed by the governor with the consent of the senate, and, except for the student member, shall hold their offices for a term of six years from the first day of October and until their successors shall be appointed and qualified. ~~((Five))~~ The student member shall hold his or her office for a term of one year from the first day of June until his or her successor is appointed and qualified. The student member shall be a full-time student in good standing at the university at the time of appointment.

(2) Six members of said board shall constitute a quorum for the transaction of business. In the case of a vacancy, or when an appointment is made after the date of the expiration of a term, the governor shall fill the vacancy for the remainder of the term of the regent whose office has become vacant or expired.

(3) Except for the term of the student member, no more than the terms of two members will expire simultaneously on the last day of September in any one year.

(4) A student appointed under this section shall excuse himself or herself from participation or voting on matters relating to the hiring, discipline, or tenure of faculty members and personnel.

**Sec. 2.** RCW 28B.30.100 and 1985 c 61 s 2 are each amended to read as follows:

(1) The governance of Washington State University shall be vested in a board of regents to consist of ~~((nine))~~ ten members one of whom shall be a student. The governor shall select the student member from a list of candidates, of at least three and not more than five, submitted by the governing body of the associated

students. They shall be appointed by the governor, by and with the consent of the senate and, except for the student member, shall hold their offices for a term of six years from the first day of October and until their successors are appointed and qualified. ((Five)) The student member shall hold his or her office for a term of one year from the first day of June until his or her successor is appointed and qualified. The student member shall be a full-time student in good standing at the university at the time of appointment.

(2) Six members of said board shall constitute a quorum for the transaction of business. In the case of a vacancy or when an appointment is made after the date of the expiration of a term, the governor shall fill the vacancy for the remainder of the term of the regent whose office has become vacant or expired.

(3) Except for the term of the student member, no more than the terms of two members will expire simultaneously on the last day of September in any one year.

(4) Each regent shall, before entering upon the discharge of his respective duties as such, execute a good and sufficient bond to the state of Washington, with two or more sufficient sureties, residents of the state, or with a surety company licensed to do business within the state, in the penal sum of not less than five thousand dollars, conditioned for the faithful performance of his duties as such regent: PROVIDED, That the university shall pay any fees incurred for any such bonds for their board members.

(5) A student appointed under this section shall excuse himself or herself from participation or voting on matters relating to the hiring, discipline, or tenure of faculty members and personnel.

Sec. 3. RCW 28B.35.100 and 1985 c 137 s 1 are each amended to read as follows:

(1) The governance of each of the regional universities shall be vested in a board of trustees consisting of ((seven)) eight members, one of whom shall be a student. The governor shall select the student member from a list of candidates, of at least three and not more than five, submitted by the governing body of the associated students. They shall be appointed by the governor with the consent of the senate and, except for the student member, shall hold their offices for a term of six years from the first day of October and until their successors are appointed and qualified. The student member shall hold his or her office for a term of one year from the first day of June and until his or her successor is appointed and qualified. The student member shall be a full-time student in good standing at the respective university at the time of appointment.

(2) Five members of the board constitute a quorum for the transaction of business. In case of a vacancy, or when an appointment is made after the date of expiration of the term, the governor shall fill the vacancy for the remainder of the term of the trustee whose office has become vacant or expired.

(3) Except for the term of the student member, no more than the terms of two members will expire simultaneously on the last day of September in any one year.

(4) A student appointed under this section shall excuse himself or herself from participation or voting on matters relating to the hiring, discipline, or tenure of faculty members and personnel.

Sec. 4. RCW 28B.40.100 and 1985 c 137 s 2 are each amended to read as follows:

(1) The governance of The Evergreen State College shall be vested in a board of trustees consisting of ((seven)) eight members, one of whom shall be a student. The governor shall select the student member from a list of candidates, of at least three and not more than five, submitted by the student body. They shall be appointed by the governor with the consent of the senate and, except for the student member, shall hold their offices for a term of six years from the first day of October and until their successors are appointed and qualified. The student member shall hold his or her office for a term of one year from the first day of June and until his or her successor is appointed and qualified. The student member shall be a full-time student in good standing at the college at the time of appointment.

(2) Five members of the board constitute a quorum for the transaction of business. In case of a vacancy, or when an appointment is made after the date of expiration of the term, the governor shall fill the vacancy for the remainder of the term of the trustee whose office has become vacant or expired.

(3) Except for the term of the student member, no more than the terms of two members will expire simultaneously on the last day of September in any one year.

(4) A student appointed under this section shall excuse himself or herself from participation or voting on matters relating to the hiring, discipline, or tenure of faculty members and personnel.

Passed the Senate February 17, 1998.

Passed the House March 3, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

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## CHAPTER 96

[Senate Bill 6149]

### REGIONAL FISHERIES ENHANCEMENT ADVISORY BOARD— RECOMMENDATIONS ON FISCAL MATTERS

AN ACT Relating to the regional fisheries enhancement group advisory board; and amending RCW 75.50.115.

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

Sec. 1. RCW 75.50.115 and 1995 c 367 s 6 are each amended to read as follows:

(1) The regional fisheries enhancement group advisory board shall:

(a) Assess the training and technical assistance needs of the regional fisheries enhancement groups;



(b) Develop a training and technical assistance services plan in order to provide timely, topical technical assistance and training services to regional fisheries enhancement groups. The plan shall be provided to the director and to the senate and house of representatives natural resources committees no later than October 1, 1995, and shall be updated not less than every year. The advisory board shall provide ample opportunity for the public and interested parties to participate in the development of the plan. The plan shall include but is not limited to:

(i) Establishment of an information clearinghouse service that is readily available to regional fisheries enhancement groups. The information clearinghouse shall collect, collate, and make available a broad range of information on subjects that affect the development, implementation, and operation of diverse fisheries and habitat enhancement projects. The information clearinghouse service may include periodical news and informational bulletins;

(ii) An ongoing program in order to provide direct, on-site technical assistance and services to regional fisheries enhancement groups. The advisory board shall assist regional fisheries enhancement groups in soliciting federal, state, and local agencies, tribal governments, institutions of higher education, and private business for the purpose of providing technical assistance and services to regional fisheries enhancement group projects; and

(iii) A cost estimate for implementing the plan;

(c) Propose a budget to the director for operation of the advisory board and implementation of the technical assistance plan;

(d) Make recommendations to the director regarding regional enhancement group project proposals and funding of those proposals; and

(e) Establish criteria for the redistribution of unspent project funds for any regional enhancement group that has a year ending balance exceeding one hundred thousand dollars.

(2) The regional fisheries enhancement group advisory board may:

(a) Facilitate resolution of disputes between regional fisheries enhancement groups and the department;

(b) Promote community and governmental partnerships that enhance the salmon resource and habitat;

(c) Promote environmental ethics and watershed stewardship;

(d) Advocate for watershed management and restoration;

(e) Coordinate regional fisheries enhancement group workshops and training;

(f) Monitor and evaluate regional fisheries enhancement projects;

(g) Provide guidance to regional fisheries enhancement groups; and

(h) Develop recommendations to the director to address identified impediments to the success of regional fisheries enhancement groups.

(3)(a) The regional fisheries enhancement group advisory board shall develop recommendations for limitations on the amount of overhead that a regional fisheries enhancement group may charge from each of the following categories of funding provided to the group:

- (i) Federal funds;
- (ii) State funds;
- (iii) Local funds; and
- (iv) Private donations.

(b) The advisory board shall develop recommendations for limitations on the number and salary of paid employees that are employed by a regional fisheries enhancement group. The regional fisheries enhancement group advisory board shall adhere to the founding principles for regional groups that emphasize the volunteer nature of the groups, maximization of field-related fishery resource benefits, and minimization of overhead.

(c) The advisory board shall evaluate and make recommendations for the limitation or elimination of commissions, finders fees, or other reimbursements to regional fisheries enhancement group employees.

(d) The regional fisheries enhancement group advisory board shall report to the appropriate legislative committees by January 1, 1999, on the board recommendations for overhead limitations, paid employee limitations, and commission limitations for regional fisheries enhancement groups.

Passed the Senate February 10, 1998.

Passed the House March 4, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

## CHAPTER 97

[Substitute Senate Bill 6150]

### SELECTIVE FISHING METHODS—EVALUATION

AN ACT Relating to evaluating selective fishing methods; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature is interested in improving the selective fishing capabilities of the state's salmon fisheries. In order to better understand how this goal can be accomplished, the department of fish and wildlife shall prepare a report detailing the selective fishing capabilities of existing types of commercial and recreational salmon fishing gear and of current fishing techniques. The report shall also include information on alternative types of fishing gear and fishing techniques. The department shall seek input from commercial, recreational, and tribal fishing interests in preparing the report. The report shall be submitted to the appropriate legislative committees by December 31, 1998.

Passed the Senate February 12, 1998.

Passed the House March 5, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

**CHAPTER 98**

[Senate Bill 6604]

**PREMANUFACTURED ELECTRIC POWER GENERATION EQUIPMENT—  
EXEMPTIONS BY RULE**

AN ACT Relating to premanufactured electric power generation equipment; and amending RCW 19.28.200 and 19.28.610.

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

**Sec. 1.** RCW 19.28.200 and 1992 c 240 s 1 are each amended to read as follows:

(1) No license under the provision of this chapter shall be required from any utility or any person, firm, partnership, corporation, or other entity employed by a utility because of work in connection with the installation, repair, or maintenance of lines, wires, apparatus, or equipment owned by or under the control of a utility and used for transmission or distribution of electricity from the source of supply to the point of contact at the premises and/or property to be supplied and service connections and meters and other apparatus or appliances used in the measurement of the consumption of electricity by the customer.

(2) No license under the provisions of this chapter shall be required from any utility because of work in connection with the installation, repair, or maintenance of the following:

(a) Lines, wires, apparatus, or equipment used in the lighting of streets, alleys, ways, or public areas or squares;

(b) Lines, wires, apparatus, or equipment owned by a commercial, industrial, or public institution customer that are an integral part of a transmission or distribution system, either overhead or underground, providing service to such customer and located outside the building or structure: PROVIDED, That a utility does not initiate the sale of services to perform such work;

(c) Lines and wires, together with ancillary apparatus, and equipment, owned by a customer that is an independent power producer who has entered into an agreement for the sale of electricity to a utility and that are used in transmitting electricity from an electrical generating unit located on premises used by such customer to the point of interconnection with the utility's system.

(3) Any person, firm, partnership, corporation, or other entity licensed under RCW 19.28.120 may enter into a contract with a utility for the performance of work under subsection (2) of this section.

(4) No license under the provisions of this chapter shall be required from any person, firm, partnership, corporation, or other entity because of the work of installing and repairing ignition or lighting systems for motor vehicles.

(5) No license under the provisions of this chapter shall be required from any person, firm, partnership, corporation, or other entity because of work in connection with the installation, repair, or maintenance of wires and equipment, and installations thereof, exempted in RCW 19.28.010.

(6) The department may by rule exempt from licensing requirements under this chapter work performed on premanufactured electric power generation equipment assemblies and control gear involving the testing, repair, modification, maintenance, or installation of components internal to the power generation equipment, the control gear, or the transfer switch.

Sec. 2. RCW 19.28.610 and 1994 c 157 s 1 are each amended to read as follows:

Nothing in RCW 19.28.510 through 19.28.620 shall be construed to require that a person obtain a license or a certified electrician in order to do electrical work at his or her residence or farm or place of business or on other property owned by him or her unless the electrical work is on the construction of a new building intended for rent, sale, or lease. However, if the construction is of a new residential building with up to four units intended for rent, sale, or lease, the owner may receive an exemption from the requirement to obtain a license or use a certified electrician if he or she provides a signed affidavit to the department stating that he or she will be performing the work and will occupy one of the units as his or her principal residence. The owner shall apply to the department for this exemption and may only receive an exemption once every twenty-four months. It is intended that the owner receiving this exemption shall occupy the unit as his or her principal residence for twenty-four months after completion of the units. Nothing in RCW 19.28.510 through 19.28.620 shall be intended to derogate from or dispense with the requirements of any valid electrical code enacted by a city or town pursuant to RCW 19.28.010(3), except that no code shall require the holder of a certificate of competency to demonstrate any additional proof of competency or obtain any other license or pay any fee in order to engage in the electrical construction trade. RCW 19.28.510 through 19.28.620 shall not apply to common carriers subject to Part I of the Interstate Commerce Act, nor to their officers and employees. Nothing in RCW 19.28.510 through 19.28.620 shall be deemed to apply to the installation or maintenance of telephone, telegraph, radio, or television wires and equipment; nor to any electrical utility or its employees in the installation, repair, and maintenance of electrical wiring, circuits, and equipment by or for the utility, or comprising a part of its plants, lines or systems. The licensing provisions of RCW 19.28.510 through 19.28.620 shall not apply to:

(1) Persons making electrical installations on their own property or to regularly employed employees working on the premises of their employer, unless the electrical work is on the construction of a new building intended for rent, sale, or lease; ((or))

(2) Employees of an employer while the employer is performing utility type work of the nature described in RCW 19.28.200 so long as such employees have registered in the state of Washington with or graduated from a state-approved outside lineman apprenticeship course that is recognized by the department and that qualifies a person to perform such work; or

(3) Any work exempted under RCW 19.28.200(6).

Nothing in RCW 19.28.510 through 19.28.620 shall be construed to restrict the right of any householder to assist or receive assistance from a friend, neighbor, relative or other person when none of the individuals doing the electrical installation hold themselves out as engaged in the trade or business of electrical installations. Nothing precludes any person who is exempt from the licensing requirements of this chapter under this section from obtaining a journeyman or specialty certificate of competency if they otherwise meet the requirements of this chapter.

Passed the Senate February 14, 1998.

Passed the House March 3, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

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## CHAPTER 99

[Substitute Senate Bill 6605]

### LIEN RIGHTS FOR OWNERS OF SIRES PROVIDING SEMEN FOR ARTIFICIAL INSEMINATION

AN ACT Relating to artificial insemination procedures and reproductively viable semen; amending RCW 60.52.030; adding a new section to chapter 60.52 RCW; and providing an effective date.

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

**Sec. 1.** RCW 60.52.030 and 1913 c 53 s 1 are each amended to read as follows:

The owner or owners of any such sire receiving such certificate, by complying with RCW 60.52.010 and 60.52.020, shall obtain and have a lien upon the female served for the period of ~~((one-year))~~ eighteen months from the date of service, or upon the get of any such sire for the period of one year from the date of birth of such get: PROVIDED, Said owner or owners shall file for record a statement of account, verified by affidavit, with the county auditor of the county wherein the service has been rendered, of the amount due such owner or owners for said service, together with a description of the female served, within ten months from the date of service or date of birth, as the case may be: PROVIDED FURTHER, That the lien upon the get of any such sire shall be a preferred lien: AND PROVIDED FURTHER, That no sale or transfer of any female animal served shall defeat the right of such lien holder.

**NEW SECTION.** **Sec. 2.** A new section is added to chapter 60.52 RCW to read as follows:

When an owner of a sire, or an owner of semen from sires, provides, for the insemination of a female, reproductively viable semen from the sire, the owner of the sire, or the owner of the semen, without satisfying the requirements of RCW 60.52.010 and 60.52.020, upon delivery of the semen by artificial insemination procedures, obtains and has a lien upon the female to which the semen is delivered by artificial insemination procedures, or a lien upon the

offspring of that female as the result of delivery of the semen by artificial insemination procedures. The lien upon the female survives for eighteen months from the date of the insemination procedure; the lien upon the offspring survives for one year from the date of birth of the resulting offspring. However, the owner of the sire, or the owner of the semen, must, within ten months of the date of the insemination procedure or the date of birth, file for record, with the county auditor of the county where the insemination procedure was rendered, a statement of account, verified by affidavit, indicating the amount due to the owner for the reproductively viable semen, along with a description of the female or the name and address of the person for whom the procedure was provided. The lien, whether upon the female or upon the offspring, is a preferred lien. Sale or transfer of the inseminated female or of the offspring does not defeat the right of the lien holder.

**NEW SECTION.** Sec. 3. This act takes effect July 1, 1998.

Passed the Senate February 14, 1998.

Passed the House March 5, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

## CHAPTER 100

[Substitute Senate Bill 6669]

### PERPETUAL TIMBER RIGHTS—STATEMENTS OF INTENT FOR USE

AN ACT Relating to perpetual timber rights; and adding a new section to chapter 76.09 RCW.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 76.09 RCW to read as follows:

Notwithstanding any other provision of this chapter to the contrary, for the purposes of RCW 76.09.050(1), 76.09.060(3) (b)(i)(A) and (c), and 76.09.065(2)(a), where timber rights have been transferred by deed to a perpetual owner who is different from the forest landowner, the owner of perpetual timber rights may sign the forest practices application and the statement of intent not to convert for a set period of time. The forest practices application is not complete until the holder of perpetual timber rights has submitted evidence to the department that the signed forest practices application and the signed statement of intent have been served on the forest landowner.

Passed the Senate February 14, 1998.

Passed the House March 4, 1998.

Approved by the Governor March 20, 1998.

Filed in Office of Secretary of State March 20, 1998.

**CHAPTER 101**

[Substitute House Bill 1193]

**PERSONAL SERVICE CONTRACTS**

AN ACT Relating to personal service contracts; amending RCW 39.29.003, 39.29.006, 39.29.011, 39.29.016, 39.29.018, 39.29.025, 39.29.040, 39.29.055, 39.29.065, and 39.29.068; adding a new section to chapter 39.29 RCW; and repealing RCW 39.29.035.

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

**Sec. 1.** RCW 39.29.003 and 1993 c 433 s 1 are each amended to read as follows:

It is the intent of this chapter to establish a policy of open competition for all personal service contracts (~~and subcontracts to personal service contracts~~) entered into by state agencies, unless specifically exempted under this chapter. It is further the intent to provide for legislative and executive review of all personal service contracts, to centralize the location of information about personal service contracts for ease of public review, and ensure proper accounting of personal services expenditures.

**Sec. 2.** RCW 39.29.006 and 1993 c 433 s 2 are each amended to read as follows:

As used in this chapter:

(1) "Agency" means any state office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, and educational, correctional, and other types of institutions.

(2) "Client services" means services provided directly to agency clients including, but not limited to, medical and dental services, employment and training programs, residential care, and subsidized housing.

(3) "Competitive solicitation" means a documented formal process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

(4) "Consultant" means an independent individual or firm contracting with an agency to perform a service or render an opinion or recommendation according to the consultant's methods and without being subject to the control of the agency except as to the result of the work. The agency monitors progress under the contract and authorizes payment.

(5) "Emergency" means a set of unforeseen circumstances beyond the control of the agency that either:

(a) Present a real, immediate threat to the proper performance of essential functions; or

(b) May result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

(6) "Evidence of competition" means documentation demonstrating that the agency has solicited responses from multiple firms in selecting a consultant.

(7) "Personal service" means professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement. This term does not include purchased services as defined under subsection (9) of this section. This term does include client services.

(8) "Personal service contract" means an agreement, or any amendment thereto, with a consultant for the rendering of personal services to the state which is consistent with RCW 41.06.380.

(9) "Purchased services" means services provided by a vendor to accomplish routine, continuing and necessary functions. This term includes, but is not limited to, services acquired under RCW 43.19.190 or 43.105.041 for equipment maintenance and repair; operation of a physical plant; security; computer hardware and software maintenance; data entry; key punch services; and computer time-sharing, contract programming, and analysis.

(10) "Sole source" means a consultant providing professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The justification shall be based on either the uniqueness of the service or sole availability at the location required.

~~((11) "Subcontract" means a contract assigning some of the work of a contract to a third party.))~~

**Sec. 3.** RCW 39.29.011 and 1987 c 414 s 3 are each amended to read as follows:

All personal service contracts shall be entered into pursuant to competitive solicitation, except for:

- (1) Emergency contracts;
- (2) Sole source contracts;
- (3) Contract amendments;

(4) Contracts between a consultant and an agency of less than ~~((ten))~~ twenty thousand dollars. However, contracts of ~~((two))~~ five thousand ~~((five hundred))~~ dollars or greater but less than ~~((ten))~~ twenty thousand dollars shall have documented evidence of competition. Agencies shall not structure contracts to evade these requirements; and

(5) Other specific contracts or classes or groups of contracts exempted from the competitive solicitation process by the director of the office of financial management when it has been determined that a competitive solicitation process is not appropriate or cost-effective.

**Sec. 4.** RCW 39.29.016 and 1996 c 288 s 29 are each amended to read as follows:

Emergency contracts shall be filed with the office of financial management ~~((and the joint legislative audit and review committee))~~ and made available for public inspection within three working days following the commencement of work or execution of the contract, whichever occurs first. Documented justification for emergency contracts shall be provided to the office of financial



management (~~and the joint legislative audit and review committee~~) when the contract is filed.

**Sec. 5.** RCW 39.29.018 and 1996 c 288 s 30 are each amended to read as follows:

(1) Sole source contracts shall be filed with the office of financial management (~~and the joint legislative audit and review committee~~) and made available for public inspection at least ten working days prior to the proposed starting date of the contract. Documented justification for sole source contracts shall be provided to the office of financial management (~~and the joint legislative audit and review committee~~) when the contract is filed. For sole source contracts of ~~((ten))~~ twenty thousand dollars or more (~~that are state funded~~), documented justification shall include evidence that the agency attempted to identify potential consultants by advertising through state-wide or regional newspapers.

(2) The office of financial management shall approve sole source contracts of ~~((ten))~~ twenty thousand dollars or more (~~that are state funded~~), before any such contract becomes binding and before any services may be performed under the contract. These requirements shall also apply to sole source contracts of less than ~~((ten))~~ twenty thousand dollars if the total amount of such contracts between an agency and the same consultant is ~~((ten))~~ twenty thousand dollars or more within a fiscal year. Agencies shall ensure that the costs, fees, or rates negotiated in filed sole source contracts of ~~((ten))~~ twenty thousand dollars or more are reasonable.

**Sec. 6.** RCW 39.29.025 and 1996 c 288 s 31 are each amended to read as follows:

(1) Substantial changes in either the scope of work specified in the contract or in the scope of work specified in the formal solicitation document must generally be awarded as new contracts. Substantial changes executed by contract amendments must be submitted to the office of financial management (~~and the joint legislative audit and review committee~~), and are subject to approval by the office of financial management.

(2) An amendment or amendments to personal service contracts, if the value of the amendment or amendments, whether singly or cumulatively, exceeds fifty percent of the value of the original contract must be provided to the office of financial management (~~and the joint legislative audit and review committee~~).

(3) The office of financial management shall approve amendments provided to it under this section before the amendments become binding and before services may be performed under the amendments.

(4) The amendments must be filed with the office of financial management and made available for public inspection at least ten working days prior to the proposed starting date of services under the amendments.

(5) The office of financial management shall approve amendments provided to it under this section only if they meet the criteria for approval of the amendments established by the director of the office of financial management.

**Sec. 7.** RCW 39.29.040 and 1996 c 2 s 19 are each amended to read as follows:

This chapter does not apply to:

(1) Contracts specifying a fee of less than ~~((two))~~ five thousand ~~((five hundred))~~ dollars if the total of the contracts from that agency with the contractor within a fiscal year does not exceed ~~((two))~~ five thousand ~~((five hundred))~~ dollars;

(2) Contracts awarded to companies that furnish a service where the tariff is established by the utilities and transportation commission or other public entity;

(3) Intergovernmental agreements awarded to any governmental entity, whether federal, state, or local and any department, division, or subdivision thereof;

(4) Contracts awarded for services to be performed for a standard fee, when the standard fee is established by the contracting agency or any other governmental entity and a like contract is available to all qualified applicants;

(5) Contracts for services that are necessary to the conduct of collaborative research if prior approval is granted by the funding source;

(6) Contracts for client services;

(7) Contracts for architectural and engineering services as defined in RCW 39.80.020, which shall be entered into under chapter 39.80 RCW;

(8) Contracts for the employment of expert witnesses for the purposes of litigation; and

(9) Contracts for bank supervision authorized under RCW 30.38.040.

**Sec. 8.** RCW 39.29.055 and 1996 c 288 s 32 are each amended to read as follows:

(1) ~~((State-funded))~~ Personal service contracts subject to competitive solicitation shall be (a) filed with the office of financial management ((and the joint legislative audit and review committee)) and made available for public inspection ((at least ten working days before the proposed starting date of the contract)); and (b) reviewed and approved by the office of financial management when those contracts provide services relating to management consulting, organizational development, marketing, communications, employee training, or employee recruiting.

(2) ~~((The office of financial management shall review and approve state-funded))~~ Personal service contracts subject to competitive solicitation that provide services relating to management consulting, organizational development, marketing, communications, employee training, or employee recruiting shall be made available for public inspection at least ten working days before the proposed starting date of the contract. All other contracts shall be effective no earlier than the date they are filed with the office of financial management.

**Sec. 9.** RCW 39.29.065 and 1987 c 414 s 8 are each amended to read as follows:

To implement this chapter, the director of the office of financial management shall establish procedures for the competitive solicitation and award of personal service contracts, recordkeeping requirements, and procedures for the reporting and filing of contracts. For reporting purposes, the director may establish categories for grouping of contracts. The procedures required under this section shall also include the criteria for amending personal service contracts. At the beginning of each biennium, the director may, by administrative policy, adjust the dollar thresholds prescribed in RCW 39.29.011, 39.29.018, 39.29.040, and 39.29.068 to levels not to exceed the percentage increase in the implicit price deflator. Adjusted dollar thresholds shall be rounded to the nearest five hundred dollar increment.

**Sec. 10.** RCW 39.29.068 and 1993 c 433 s 8 are each amended to read as follows:

The office of financial management shall maintain a publicly available list of all personal service contracts entered into by state agencies during each fiscal year. The list shall identify the contracting agency, the contractor, the purpose of the contract, effective dates and periods of performance, the cost of the contract and funding source, any modifications to the contract, and whether the contract was competitively procured or awarded on a sole source basis. The office of financial management shall also ensure that state accounting definitions and procedures are consistent with RCW 39.29.006 and permit the reporting of personal services expenditures by agency and by type of service. Designations of type of services shall include, but not be limited to, management and organizational services, legal and expert witness services, financial services, computer and information services, social or technical research, marketing, communications, and employee training or recruiting services. The office of financial management shall report annually to the fiscal committees of the senate and house of representatives on sole source contracts filed under this chapter. The report shall describe: (1) The number and aggregate value of contracts for each category established in this section; (2) the number and aggregate value of contracts of ~~((two))~~ five thousand ~~((five hundred))~~ dollars or greater but less than ~~((ten))~~ twenty thousand dollars; (3) the number and aggregate value of contracts of ~~((ten))~~ twenty thousand dollars or greater; (4) the justification provided by agencies for the use of sole source contracts; and (5) any trends in the use of sole source contracts.

**NEW SECTION.** **Sec. 11.** A new section is added to chapter 39.29 RCW to read as follows:

Personal service contracts awarded by institutions of higher education from nonstate funds do not have to be filed in advance and approved by the office of financial management. Any such contract is subject to all other requirements of this chapter, including the requirements under RCW 39.29.068 for annual reporting of personal service contracts to the office of financial management.

NEW SECTION. Sec. 12. RCW 39.29.035 and 1993 c 433 s 4 are each repealed.

Passed the House March 7, 1998.  
 Passed the Senate March 2, 1998.  
 Approved by the Governor March 23, 1998.  
 Filed in Office of Secretary of State March 23, 1998.

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## CHAPTER 102

[Substitute House Bill 1253]

### BUSINESS ORGANIZATIONS—STANDARDIZATION OF NAMING REQUIREMENTS

AN ACT Relating to business organizations; amending RCW 23B.04.010, 23B.15.060, 24.03.045, 24.06.045, 25.04.710, 25.04.715, 25.10.020, 25.15.010, 25.15.325, and 25.15.015; and adding a new section to chapter 25.04 RCW.

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

Sec. 1. RCW 23B.04.010 and 1994 c 211 s 1304 are each amended to read as follows:

(1) A corporate name:

(a) Must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.;"

(b) Must not contain language stating or implying that the corporation is organized for a purpose other than those permitted by RCW 23B.03.010 and its articles of incorporation;

(c) Must not contain any of the following words or phrases:

"Bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and

(d) Except as authorized by subsections (2) and (3) of this section, must be distinguishable upon the records of the secretary of state from:

(i) The corporate name of a corporation incorporated or authorized to transact business in this state;

(ii) A corporate name reserved or registered under (~~RCW 23B.04.020 or 23B.04.030~~) chapter 23B.04 RCW;

(iii) The fictitious name adopted (~~pursuant to~~) under RCW 23B.15.060 by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(iv) The corporate name or reserved name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state under chapter 24.03 RCW;

(v) The name or reserved name of a mutual corporation or miscellaneous corporation incorporated or authorized to do business under chapter 24.06 RCW;

(vi) The name or reserved name of a foreign or domestic limited partnership formed or registered under chapter (~~25.08 or~~) 25.10 RCW; (~~and~~

~~—(vi))~~ (vii) The name or reserved name of ~~((any))~~ a limited liability company organized or registered under chapter 25.15 RCW; and

(viii) The name or reserved name of a limited liability partnership registered under chapter 25.04 RCW.

(2) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1) of this section. The secretary of state shall authorize use of the name applied for if:

(a) The other corporation, company, holder, limited liability partnership, or limited partnership consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(3) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation, ~~((or of another domestic or foreign))~~ limited liability company, ~~((or of a domestic or foreign))~~ limited partnership, or limited liability partnership, that is used in this state if the other ~~((corporation is incorporated or authorized to transact business in this state, or if the limited liability company is organized or authorized to transact business in this state, or if the limited partnership))~~ entity is formed or authorized to transact business in this state, and the proposed user corporation:

(a) Has merged with the other corporation, limited liability company, or limited partnership; or

(b) Has been formed by reorganization of the other corporation.

(4) This title does not control the use of assumed business names or "trade names."

(5) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:

(a) A variation in ~~((the designation, under subsection (1)(a) of this section, used for the same name))~~ any of the following designations for the same name: "Corporation," "incorporated," "company," "limited," "partnership," "limited partnership," "limited liability company," or "limited liability partnership," or the abbreviations "corp.," "inc.," "co.," "ltd.," "LP," "L.P.," "LLP," "L.L.P.," "LLC," or "L.L.C.,"

(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(c) Punctuation, capitalization, or special characters or symbols in the same name; or

(d) Use of abbreviation or the plural form of a word in the same name.

Sec. 2. RCW 23B.15.060 and 1989 c 165 s 174 are each amended to read as follows:

(1) No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(a) Contains the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.";

(b) Does not contain language stating or implying that the corporation is organized for a purpose other than that permitted by RCW 23B.03.010 and its articles of incorporation;

(c) Does not contain any of the following words or phrases: "Bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and

(d) Except as authorized by subsections ~~((3))~~ (4) and ~~((4))~~ (5) of this section, is distinguishable upon the records of the secretary of state from:

(i) The corporate name of a corporation incorporated or authorized to transact business in this state;

(ii) A corporate name reserved or registered under ~~((RCW 23B.04.020 or 23B.04.030))~~ chapter 23B.04 RCW;

(iii) The fictitious name adopted pursuant to subsection ~~((2))~~ (3) of this section by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(iv) The corporate name or reserved name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state under chapter 24.03 RCW; ~~((and))~~

(v) The name or reserved name of a mutual corporation or miscellaneous corporation incorporated or authorized to do business under chapter 24.06 RCW;

(vi) The name or reserved name of a foreign or domestic limited partnership formed or registered under chapter 25.10 RCW;

(vii) The name or reserved name of any limited liability company organized or registered under chapter 25.15 RCW; and

(viii) The name or reserved name of any limited liability partnership registered under chapter 25.04 RCW.

(2) A name shall not be considered distinguishable under the same grounds as provided under RCW 23B.04.010.

(3) If the corporate name of a foreign corporation does not satisfy the requirements of subsection (1) of this section, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:

(a) May add the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," to its corporate name for use in this state; or

(b) May use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

~~((3))~~ (4) A foreign corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1)(d) of this section. The secretary of state shall authorize use of the name applied for if:

(a) The other corporation, company, holder, limited liability partnership, or limited partnership consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

~~((4))~~ (5) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) Has merged with the other corporation; or

(b) Has been formed by reorganization of the other corporation.

~~((5))~~ (6) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of subsection (1) of this section, it may not transact business in this state under the changed name until it adopts a name satisfying such requirements and obtains an amended certificate of authority under RCW 23B.15.040.

Sec. 3. RCW 24.03.045 and 1994 c 211 s 1305 are each amended to read as follows:

The corporate name:

(1) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(2) ~~((Shall not be the same as, or deceptively similar to, the name of any corporation, whether for profit or not for profit, existing under any act of this state, or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, any foreign or domestic limited liability company on file with the secretary of state, any domestic or foreign limited partnership on file with the secretary, or a limited partnership existing under chapter 25.10 RCW, or a corporate name reserved or registered as permitted by the laws of this state. This subsection shall not apply if the applicant files with the secretary of state either of the following: (a) The written consent of the other corporation, limited liability company, limited partnership, or holder of a reserved name to use the same or deceptively similar name and one or more words are added or deleted to make the name distinguishable from the other name as determined by the secretary of state, or (b) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this state.))~~ (a) Except as provided in (b) and (c) of this

subsection, must be distinguishable upon the records of the secretary of state from:

(i) The corporate name or reserved name of a corporation or domestic corporation organized or authorized to transact business under this chapter;

(ii) A corporate name reserved or registered under chapter 23B.04 RCW;

(iii) The fictitious name adopted under RCW 23B.15.060 by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(iv) The name or reserved name of a mutual corporation or miscellaneous corporation incorporated or authorized to do business under chapter 24.06 RCW;

(v) The name or reserved name of a foreign or domestic limited partnership formed or registered under chapter 25.10 RCW;

(vi) The name or reserved name of a limited liability company organized or registered under chapter 25.15 RCW; and

(vii) The name or reserved name of a limited liability partnership registered under chapter 25.04 RCW.

(b) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in (a) of this subsection. The secretary of state shall authorize use of the name applied for if:

(i) The other corporation, company, holder, limited liability partnership, or limited partnership consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(ii) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(c) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation, limited liability company, limited partnership, or limited liability partnership, that is used in this state if the other entity is formed or authorized to transact business in this state, and the proposed user corporation:

(i) Has merged with the other corporation, limited liability company, or limited partnership; or

(ii) Has been formed by reorganization of the other corporation.

(3) Shall be transliterated into letters of the English alphabet, if it is not in English.

(4) Shall not include or end with "incorporated," "company," "corporation," "partnership," "limited partnership," or "Ltd.," or any abbreviation thereof, but may use "club," "league," "association," "services," "committee," "fund," "society," "foundation," ". . . . .", a nonprofit corporation," or any name of like import.



(5) May only include the term "public benefit" or names of like import if the corporation has been designated as a public benefit nonprofit corporation by the secretary in accordance with this chapter.

(6) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:

(a) A variation in any of the following designations for the same name: "Corporation," "incorporated," "company," "limited," "partnership," "limited partnership," "limited liability company," or "limited liability partnership," or the abbreviations "corp.," "inc.," "co.," "ltd.," "LP," "L.P.," "LLP," "L.L.P.," "LLC," or "L.L.C.":

(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(c) Punctuation, capitalization, or special characters or symbols in the same name; or

(d) Use of abbreviation or the plural form of a word in the same name.

(7) This title does not control the use of assumed business names or "trade names."

**Sec. 4.** RCW 24.06.045 and 1995 c 337 s 22 are each amended to read as follows:

The corporate name:

(1) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

~~(2) ((Shall not be the same as, or deceptively similar to, the name of any corporation existing under any act of this state, or any foreign corporation authorized to transact business or conduct affairs in this state under any act of this state, or the name of any limited liability company organized or authorized to transact business under any act of this state, the name of a domestic or foreign limited partnership on file with the secretary, or a corporate name reserved or registered as permitted by the laws of this state. This subsection shall not apply if the applicant files with the secretary of state either of the following: (a) The written consent of the other corporation, limited liability company, limited partnership, or holder of a reserved name to use the same or deceptively similar name and one or more words are added or deleted to make the name distinguishable from the other name as determined by the secretary of state, or (b) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this state.))~~ (a) Except as provided in (b) and (c) of this subsection, must be distinguishable upon the records of the secretary of state from:

(i) The corporate name of a corporation organized or authorized to transact business in this state;

(ii) A corporate name reserved or registered under chapter 23B.04 RCW;

(iii) The name or reserved name of a mutual corporation or miscellaneous corporation incorporated or authorized to do business under this chapter;

(iv) The fictitious name adopted under RCW 23B.15.060 by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(v) The corporate name or reserved name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state under chapter 24.03 RCW;

(vi) The name or reserved name of a foreign or domestic limited partnership formed or registered under chapter 25.10 RCW;

(vii) The name or reserved name of a limited liability company organized or registered under chapter 25.15 RCW; and

(viii) The name or reserved name of a limited liability partnership registered under chapter 25.04 RCW.

(b) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in (a) of this subsection. The secretary of state shall authorize use of the name applied for if:

(i) The other corporation, company, holder, limited liability partnership, or limited partnership consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(ii) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(c) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation, limited liability company, limited partnership, or limited liability partnership, that is used in this state if the other entity is incorporated, organized, formed, or authorized to transact business in this state, and the proposed user corporation:

(i) Has merged with the other corporation, limited liability company, or limited partnership; or

(ii) Has been formed by reorganization of the other corporation.

(3) Shall be transliterated into letters of the English alphabet if it is not in English.

(4) The name of any corporation formed under this section shall not include nor end with "incorporated", "company", or "corporation" or any abbreviation thereof, but may use "club", "league", "association", "services", "committee", "fund", "society", "foundation", ". . . . ., a nonprofit mutual corporation", or any name of like import.

(5) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:

(a) A variation in any of the following designations for the same name: "Corporation," "incorporated," "company," "limited," "partnership," "limited partnership," "limited liability company," or "limited liability partnership," or the

abbreviations "corp.," "inc.," "co.," "Ltd.," "LP," "L.P.," "LLP," "L.L.P.," "LLC," or "L.L.C.":

(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(c) Punctuation, capitalization, or special characters or symbols in the same name; or

(d) Use of abbreviation or the plural form of a word in the same name.

(6) This title does not control the use of assumed business names or "trade names."

**Sec. 5.** RCW 25.04.710 and 1995 c 337 s 3 are each amended to read as follows:

(1) To become and to continue as a limited liability partnership, a partnership shall file with the secretary of state an application stating the name of the partnership; the address of its principal office; if the partnership's principal office is not located in this state, the address of a registered office and the name and address of a registered agent for service of process in this state which the partnership will be required to maintain; the number of partners; a brief statement of the business in which the partnership engages; any other matters that the partnership determines to include; and that the partnership thereby applies for status as a limited liability partnership.

(2) The application shall be executed by a majority in interest of the partners or by one or more partners authorized to execute an application.

(3) The application shall be accompanied by a fee of one hundred seventy-five dollars for each partnership.

(4) The secretary of state shall register as a limited liability partnership any partnership that submits a completed application with the required fee and the name of which complies with RCW 25.04.715.

(5) A partnership registered under this section shall pay an annual fee, in each year following the year in which its application is filed, on a date and in an amount specified by the secretary of state. The fee must be accompanied by a notice, on a form provided by the secretary of state, of the number of partners currently in the partnership and of any material changes in the information contained in the partnership's application for registration.

(6) Registration is effective immediately after the date an application is filed, and remains effective until: (a) It is voluntarily withdrawn by filing with the secretary of state a written withdrawal notice executed by a majority in interest of the partners or by one or more partners authorized to execute a withdrawal notice; or (b) thirty days after receipt by the partnership of a notice from the secretary of state, which notice shall be sent by certified mail, return receipt requested, that the partnership has failed to make timely payment of the annual fee specified in subsection (5) of this section, unless the fee is paid within such a thirty-day period.

(7) The status of a partnership as a limited liability partnership, and the liability of the partners thereof, shall not be affected by: (a) Errors in the

information stated in an application under subsection (1) of this section or a notice under subsection (5) of this section; or (b) changes after the filing of such an application or notice in the information stated in the application or notice.

(8) The secretary of state may provide forms for the application under subsection (1) of this section or a notice under subsection (5) of this section.

**Sec. 6.** RCW 25.04.715 and 1995 c 337 s 4 are each amended to read as follows:

(1) The name of a limited liability partnership shall contain the words "limited liability partnership" or the abbreviation "L.L.P." or "LLP" as the last words or letters of its name.

(2) Except as provided in subsections (3) and (4) of this section, the name must be distinguishable upon the records of the secretary of state from:

(a) The corporate name of a corporation organized or authorized to transact business in this state;

(b) A corporate name reserved or registered under chapter 23B.04 RCW;

(c) The name or reserved name of a mutual corporation or miscellaneous corporation incorporated or authorized to do business under chapter 24.06 RCW;

(d) The fictitious name adopted under RCW 23B.15.060 by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(e) The corporate name or reserved name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state under chapter 24.03 RCW;

(f) The name or reserved name of a foreign or domestic limited partnership formed or registered under chapter 25.10 RCW;

(g) The name or reserved name of a limited liability company organized or registered under chapter 25.15 RCW; and

(h) The name of a limited liability partnership registered under chapter 25.04 RCW.

(3) A limited liability partnership may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (2) of this section. The secretary of state shall authorize use of the name applied for if:

(a) The other holder consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A limited liability partnership may use the name, including the fictitious name, of another domestic or foreign corporation, or of another domestic or foreign limited liability company or of a domestic or foreign limited partnership or domestic or foreign limited liability partnership, that is used in this state if the

other corporation is incorporated or authorized to transact business in this state, or if the limited liability company is organized or authorized to transact business in this state, or if the limited partnership is incorporated, organized, formed, or authorized to transact business in this state, and the proposed user corporation:

(a) Has merged with the other corporation, limited liability company, or limited partnership; or

(b) Has been formed by reorganization of the other corporation.

(5) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:

(a) A variation in any of the following designations for the same name: "Corporation," "incorporated," "company," "limited," "partnership," "limited partnership," "limited liability company," or "limited liability partnership," or the abbreviations "corp.," "inc.," "co.," "ltd.," "LP," "L.P.," "LLP," "L.L.P.," "LLC," or "L.L.C.,"

(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(c) Punctuation, capitalization, or special characters or symbols in the same name; or

(d) Use of abbreviation or the plural form of a word in the same name.

(6) This chapter does not control the use of assumed business names or "trade names."

NEW SECTION. Sec. 7. A new section is added to chapter 25.04 RCW, to be codified to follow RCW 25.04.715 immediately, to read as follows:

(1) The exclusive right to the use of a name may be reserved by:

(a) A person intending to organize a limited liability partnership under this chapter and to adopt that name;

(b) A domestic or foreign limited liability partnership registered in this state which intends to adopt that name;

(c) A foreign limited liability partnership intending to register in this state and to adopt that name; and

(d) A person intending to organize a foreign limited liability partnership and intending to have it registered in this state and adopt that name.

(2) The reservation shall be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name, accompanied by a fee established by the secretary of state by rule. If the secretary of state finds that the name is available for use by a domestic or foreign limited liability partnership, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of one hundred eighty days. The reservation is limited to one filing and is nonrenewable.

A person or partnership may transfer the right to the exclusive use of a reserved name to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

Sec. 8. RCW 25.10.020 and 1996 c 76 s 1 are each amended to read as follows:

(1) The name of each limited partnership formed pursuant to this chapter as set forth in its certificate of limited partnership:

(a) Shall contain the words "limited partnership" or the abbreviation "LP" or "L.P.";

(b) May not contain the name of a limited partner unless (i) it is also the name of a general partner, or the corporate name of a corporate general partner, or (ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(c) May not contain any of the following words or phrases: "Bank", "banking", "banker", "trust", "cooperative"; or any combination of the words "industrial" and "loan"; or any combination of any two or more of the words "building", "savings", "loan", "home", "association" and "society"; or any other words or phrases prohibited by any statute of this state;

(d) Except as authorized by subsections (2) and (3) of this section, must be distinguishable upon the records of the secretary of state from:

(i) The name or reserved name of a foreign or domestic limited partnership;

(ii) The name of ~~((any))~~ a limited liability company reserved, registered, or formed under the laws of this state or qualified to do business as a foreign limited liability company in this state under chapter 25.15 RCW;

(iii) The corporate name of a corporation incorporated or authorized to transact business in this state;

(iv) A corporate name reserved or registered under ~~((RCW 23B.04.020 or 23B.04.030))~~ chapter 23B.04 RCW;

(v) The corporate name or reserved name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state under chapter 24.03 RCW;

(vi) The name or reserved name of a mutual corporation or miscellaneous corporation incorporated or authorized to do business under chapter 24.06 RCW;

(vii) The fictitious name adopted ~~((pursuant to))~~ under RCW 23B.15.060 by a foreign corporation authorized to transact business in this state because its real name is unavailable; and

~~((vi) The corporate name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state;))~~ (viii) The name or reserved name of a limited liability partnership registered under chapter 25.04 RCW.

(2) A limited partnership may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1) of this section. The secretary of state shall authorize use of the name applied for if:

(a) The other limited partnership, company, corporation, limited liability partnership, or holder consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or

registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying limited partnership; or

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(3) A limited partnership may use the name, including the fictitious name, of another domestic or foreign limited partnership, limited liability company, limited liability partnership, or corporation that is used in this state if the other (~~limited partnership, limited liability company, or corporation~~) entity is organized, incorporated, formed, or authorized to transact business in this state and the proposed user limited partnership:

(a) Has merged with the other limited partnership, limited liability company, limited liability partnership, or corporation; or

(b) Results from reorganization with the other limited partnership, limited liability company, or corporation.

(4) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:

(a) A variation in (~~the designation, under subsection (1)(a) of this section, used for the same name~~) any of the following designations for the same name: "Corporation," "incorporated," "company," "limited," "partnership," "limited partnership," "limited liability company," or "limited liability partnership," or the abbreviations "corp.," "inc.," "co.," "Ltd.," "LP.," "L.P.," "LLP.," "L.L.P.," "LLC.," or "L.L.C.,"

(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(c) Punctuation, capitalization, or special characters or symbols in the same name; or

(d) Use of abbreviation or the plural form of a word in the same name.

(5) This (~~title~~) chapter does not control the use of assumed business names or "trade names."

**Sec. 9.** RCW 25.15.010 and 1996 c 231 s 5 are each amended to read as follows:

(1) The name of each limited liability company as set forth in its certificate of formation:

(a) Must contain the words "Limited Liability Company," the words "Limited Liability" and abbreviation "Co.," or the abbreviation "L.L.C." or "LLC";

(b) Except as provided in subsection (1)(d) of this section, may contain the name of a member or manager;

(c) Must not contain language stating or implying that the limited liability company is organized for a purpose other than those permitted by RCW 25.15.030;

(d) Must not contain any of the words or phrases: "Bank," "banking," "banker," "trust," "cooperative," "partnership," "corporation," "incorporated," or the abbreviations "corp.," "Ltd.," or "inc.," or "LP.," "L.P.," "LLP.," "L.L.P.," or any

combination of the words "industrial" and "loan," or any combination of any two or more of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and

(e) Must be distinguishable upon the records of the secretary of state from the names described in RCW 23B.04.010(1)(d) and 25.10.020(1)(d), and the names of any limited liability company reserved, registered, or formed under the laws of this state or qualified to do business as a foreign limited liability company in this state.

(2) A limited liability company may apply to the secretary of state for authorization to use any name which is not distinguishable upon the records of the secretary of state from one or more of the names described in subsection (1)(e) of this section. The secretary of state shall authorize use of the name applied for if the other corporation, limited partnership, limited liability partnership, or limited liability company consents in writing to the use and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying limited liability company.

(3) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:

(a) A variation in (~~the designation, under subsection (1)(a) of this section, used for the same name~~) any of the following designations for the same name: "Corporation," "incorporated," "company," "limited," "partnership," "limited partnership," "limited liability company," or "limited liability partnership," or the abbreviations "corp.," "inc.," "co.," "ltd.," "LP," "L.P.," "LLP," "L.L.P.," "LLC," or "L.L.C.,"

(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(c) Punctuation, capitalization, or special characters or symbols in the same name; or

(d) Use of abbreviation or the plural form of a word in the same name.

(4) This chapter does not control the use of assumed business names or "trade names."

**Sec. 10.** RCW 25.15.325 and 1996 c 231 s 10 are each amended to read as follows:

(1) A foreign limited liability company may register with the secretary of state under any name (whether or not it is the name under which it is registered in the jurisdiction of its formation) that includes the words "Limited Liability Company," the words "Limited Liability" and the abbreviation "Co.," or the abbreviation "L.L.C." or "LLC" and that could be registered by a domestic limited liability company. A foreign limited liability company may apply to the secretary of state for authorization to use a name which is not distinguishable upon the records of the office of the secretary of state from the names described in RCW 23B.04.010(~~((+)(d))~~) and 25.10.020, and the names of any domestic or foreign limited liability company reserved, registered, or formed under the laws of this



state. The secretary of state shall authorize use of the name applied for if the other corporation, limited liability company, limited liability partnership, or limited partnership consents in writing to the use and files with the secretary of state documents necessary to change its name, or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying foreign limited liability company.

(2) Each foreign limited liability company shall continuously maintain in this state:

(a) A registered office, which may but need not be a place of its business in this state. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in the same city as the registered office in conjunction with the registered office address if the foreign limited liability company also maintains on file the specific geographic address of the registered office where personal service of process may be made;

(b) A registered agent for service of process on the foreign limited liability company, which agent may be either an individual resident of this state whose business office is identical with the foreign limited liability company's registered office, or a domestic corporation, a limited partnership or limited liability company, or a foreign corporation authorized to do business in this state having a business office identical with such registered office; and

(c) A registered agent who shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filled with or as a part of the document first appointing a registered agent. In the event any individual, limited liability company, limited partnership, or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records of the secretary of state.

(3) A foreign limited liability company may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(a) The name of the foreign limited liability company;

(b) If the current registered office is to be changed, the street address of the new registered office in accord with subsection (2)(a) of this section;

(c) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(d) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(4) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any foreign limited liability company for which the agent is the registered agent by notifying the foreign limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (3) of this section and recites that the foreign limited liability company has been notified of the change.

(5) A registered agent of any foreign limited liability company may resign as agent by signing and delivering to the secretary of state for filing a statement that the registered office is also discontinued. After filing the statement the secretary of state shall mail a copy of the statement to the foreign limited liability company at its principal (~~(office address shown in its most recent annual report, or the address of its principal)~~) place of business shown in its application for certificate of registration if no annual report has been filed. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

**Sec. 11.** RCW 25.15.015 and 1994 c 211 s 103 are each amended to read as follows:

**(1) Reserved Name.**

(a) A person may reserve the exclusive use of a limited liability company name by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the limited liability company name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred eighty-day period.

(b) The owner of a reserved limited liability company name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

**(2) Registered Name.**

(a) A foreign limited liability company may register its name if the name is distinguishable upon the records of the secretary of state from the names specified in RCW 25.15.010(~~(+)(e)~~).

(b) A foreign limited liability company registers its name by delivering to the secretary of state for filing an application that:

(i) Sets forth its name and the state or country and date of its organization; and

(ii) Is accompanied by a certificate of existence, or a document of similar import, from the state or country of organization.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application and until the close of the calendar year in which the application for registration is filed.

(d) A foreign limited liability company whose registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application, which complies with the requirements of (b) of this subsection, between October 1st and December 31st of the preceding year. The renewal application when filed renews the registration for the following calendar year.

(e) A foreign limited liability company whose registration is effective may thereafter qualify as a foreign limited liability company under the registered name, or consent in writing to the use of that name by a limited liability company thereafter organized under this chapter, by a corporation thereafter formed under Title 23B RCW, by a limited partnership thereafter formed under chapter 25.10 RCW, or by another foreign limited liability company, foreign corporation, or foreign limited partnership thereafter authorized to transact business in this state. The registration terminates when the domestic limited liability company is organized, the domestic corporation is incorporated, or the domestic limited partnership is formed, or the foreign limited liability company qualifies or consents to the qualification of another foreign limited liability company, corporation, or limited partnership under the registered name.

Passed the House January 16, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.

## CHAPTER 103

[Substitute House Bill 2386]

### UNIFORM PARTNERSHIP ACT—REVISIONS

AN ACT Relating to the revised uniform partnership act; amending RCW 23B.11.080, 23B.11.090, 23B.11.100, 23B.11.110, 25.10.800, 25.10.810, 25.10.820, 25.10.830, 25.10.840, 25.15.395, 25.15.400, 25.15.405, 25.15.410, and 25.15.415; reenacting and amending RCW 43.07.120; adding a new chapter to Title 25 RCW; repealing RCW 25.04.010, 25.04.020, 25.04.030, 25.04.040, 25.04.050, 25.04.060, 25.04.070, 25.04.080, 25.04.090, 25.04.100, 25.04.110, 25.04.120, 25.04.130, 25.04.140, 25.04.150, 25.04.160, 25.04.170, 25.04.180, 25.04.190, 25.04.200, 25.04.210, 25.04.220, 25.04.230, 25.04.240, 25.04.250, 25.04.260, 25.04.270, 25.04.280, 25.04.290, 25.04.300, 25.04.310, 25.04.320, 25.04.330, 25.04.340, 25.04.350, 25.04.360, 25.04.370, 25.04.380, 25.04.390, 25.04.400, 25.04.410, 25.04.420, 25.04.430, 25.04.700, 25.04.705, 25.04.710, 25.04.715, 25.04.720, 25.04.725, 25.04.730, 25.04.735, 25.04.740, 25.04.745, and 25.04.750; and providing an effective date.

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

## ARTICLE 1

### GENERAL PROVISIONS

**NEW SECTION. Sec. 101. DEFINITIONS.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Business" includes every trade, occupation, and profession.

(2) "Debtor in bankruptcy" means a person who is the subject of:

(a) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) A comparable order under federal, state, or foreign law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) "Foreign limited liability partnership" means a partnership that:

(a) Is formed under laws other than the laws of this state; and

(b) Has the status of a limited liability partnership under those laws.

(5) "Limited liability partnership" means a partnership that has filed a statement of qualification under section 1101 of this act and does not have a similar statement in effect in any other jurisdiction.

(6) "Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under section 202 of this act, predecessor law, or comparable law of another jurisdiction.

(7) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(8) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(9) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(10) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(11) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(12) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(13) "Statement" means a statement of partnership authority under section 303 of this act, a statement of denial under section 304 of this act, a statement of dissociation under section 704 of this act, a statement of dissolution under section 805 of this act, or an amendment or cancellation of any statement under these sections.

(14) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

**NEW SECTION. Sec. 102. KNOWLEDGE AND NOTICE.** (1) A person knows a fact if the person has actual knowledge of it.

(2) A person has notice of a fact if the person:

(a) Knows of it;

(b) Has received a notification of it; or

(c) Has reason to know it exists from all of the facts known to the person at the time in question.

(3) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

(4) A person receives a notification when the notification:

(a) Comes to the person's attention; or

(b) Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(5) Except as otherwise provided in subsection (6) of this section, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if the person maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(6) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

**NEW SECTION. Sec. 103. EFFECT OF PARTNERSHIP AGREEMENT; NONWAIVABLE PROVISIONS.** (1) Except as otherwise provided in subsection (2) of this section, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(2) The partnership agreement may not:

(a) Vary the rights and duties under section 105 of this act except to eliminate the duty to provide copies of statements to all of the partners;

(b) Unreasonably restrict the right of access to books and records under section 403(2) of this act;

(c) Eliminate the duty of loyalty under section 404(2) or 603(2)(c) of this act, but, if not manifestly unreasonable:

(i) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty; or

(ii) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(d) Unreasonably reduce the duty of care under section 404(3) or 603(2)(c) of this act;

(e) Eliminate the obligation of good faith and fair dealing under section 404(4) of this act, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(f) Vary the power to dissociate as a partner under section 602(1) of this act, except to require the notice under section 601(1) of this act to be in writing;

(g) Vary the right of a court to expel a partner in the events specified in section 601(5) of this act;

(h) Vary the requirement to wind up the partnership business in cases specified in section 801 (4), (5), or (6) of this act;

(i) Vary the law applicable to a limited liability partnership under section 106(2) of this act; or

(j) Restrict rights of third parties under this chapter.

**NEW SECTION. Sec. 104. SUPPLEMENTAL PRINCIPLES OF LAW.**

(1) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(2) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in RCW 19.52.010(1).

**NEW SECTION. Sec. 105. EXECUTION AND FILING OF STATEMENTS.** (1) A statement may be filed in the office of the secretary of state. A certified copy of a statement that is filed in an office in another state may be filed in the office of the secretary of state. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in this state.

(2) A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by this chapter. An individual who executes a statement as, or on behalf of, a partner or other person shall personally declare under penalty of perjury that the contents of the statement are accurate.

(3) A person authorized by this chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(4) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

**NEW SECTION. Sec. 106. GOVERNING LAW.** (1) Except as otherwise provided in subsection (2) of this section, the law of the jurisdiction in which a

partnership has its chief executive office governs relations among the partners and the partnership.

(b) The law of this state governs relations among the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.

**NEW SECTION. Sec. 107. PARTNERSHIP SUBJECT TO AMENDMENT OR REPEAL OF CHAPTER.** A partnership governed by this chapter is subject to any amendment to or repeal of this chapter.

## **ARTICLE 2 NATURE OF PARTNERSHIP**

**NEW SECTION. Sec. 201. PARTNERSHIP AS ENTITY.** (1) A partnership is an entity distinct from its partners.

(2) A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under section 1001 of this act.

**NEW SECTION. Sec. 202. FORMATION OF PARTNERSHIP.** (1) Except as otherwise provided in subsection (2) of this section, the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

(2) An association formed under a statute other than this chapter, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this chapter.

(3) In determining whether a partnership is formed, the following rules apply:

(a) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property;

(b) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived; and

(c) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(i) Of a debt by installments or otherwise;

(ii) For services as an independent contractor or of wages or other compensation to an employee;

(iii) Of rent;

(iv) Of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;

(v) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or

(vi) For the sale of the goodwill of a business or other property by installments or otherwise.

**NEW SECTION. Sec. 203. PARTNERSHIP PROPERTY.** Property acquired by a partnership is property of the partnership and not of the partners individually.

**NEW SECTION. Sec. 204. WHEN PROPERTY IS PARTNERSHIP PROPERTY.** (1) Property is partnership property if acquired in the name of:

(a) The partnership; or

(b) One or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership, whether or not there is an indication of the name of the partnership.

(2) Property is acquired in the name of the partnership by a transfer to:

(a) The partnership in its name; or

(b) One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(3) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(4) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

### ARTICLE 3 RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

**NEW SECTION. Sec. 301. PARTNER AGENT OF PARTNERSHIP.** Subject to the effect of a statement of partnership authority under section 303 of this act:

(1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.

(2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

**NEW SECTION. Sec. 302. TRANSFER OF PARTNERSHIP PROPERTY.** (1) Partnership property may be transferred as follows:



(a) Subject to the effect of a statement of partnership authority under section 303 of this act, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name;

(b) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held; or

(c) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(2) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under section 301 of this act, and:

(a) As to a subsequent transferee who gave value for property transferred under subsection (1)(a) and (b) of this section, proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

(b) As to a transferee who gave value for property transferred under subsection (1)(c) of this section, proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(3) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection (2) of this section, from any earlier transferee of the property.

(4) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

**NEW SECTION. Sec. 303. STATEMENT OF PARTNERSHIP AUTHORITY.** (1) A partnership may file a statement of partnership authority, which:

(a) Must include:

(i) The name of the partnership; and

(ii) The street address of its chief executive office and of one office in this state, if there is one; and

(b) May state the names of all of the partners, the names of the partners authorized to execute an instrument transferring real property held in the name of the partnership, the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(2) A grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person not a partner who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in a subsequently filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(3) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if the limitation is contained in a filed statement of partnership authority.

(4) Except as otherwise provided in subsection (3) of this section and sections 704 and 805 of this act, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(5) Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five years after the date on which the statement, or the most recent amendment, was filed with the secretary of state.

**NEW SECTION. Sec. 304. STATEMENT OF DENIAL.** A partner, or other person named as a partner in a filed statement of partnership authority, may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in section 303 (2) and (3) of this act.

**NEW SECTION. Sec. 305. PARTNERSHIP LIABLE FOR PARTNER'S ACTIONABLE CONDUCT.** (1) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(2) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

**NEW SECTION. Sec. 306. PARTNER'S LIABILITY.** (1) Except as otherwise provided in subsections (2), (3), and (4) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(2) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

(3) Except as otherwise provided in subsection (4) of this section, an obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything

inconsistent in the partnership agreement that existed, in the case of a limited liability partnership in existence on the effective date of this act, and, in the case of a partnership becoming a limited liability partnership after the effective date of this act, immediately before the vote required to become a limited liability partnership under section 1101(1) of this act.

(4) If the partners of a limited liability partnership or a foreign limited liability partnership are required to be licensed to provide professional services as defined in RCW 18.100.030, and the partnership fails to maintain for itself and for its members practicing in this state a policy of professional liability insurance, bond, deposit in trust, bank escrow of cash, bank certificates of deposit, United States treasury obligations, bank letter of credit, insurance company bond, or other evidence of financial responsibility of a kind designated by rule by the state insurance commissioner and in the amount of at least one million dollars or such greater amount, not to exceed three million dollars, as the state insurance commissioner may establish by rule for a licensed profession or for any specialty within a profession, taking into account the nature and size of the businesses within the profession or specialty, then the partners shall be personally liable to the extent that, had such insurance, bond, deposit in trust, bank escrow of cash, bank certificates of deposit, United States treasury obligations, bank letter of credit, insurance company bond, or other evidence of responsibility been maintained, it would have covered the liability in question.

**NEW SECTION. Sec. 307. ACTIONS BY AND AGAINST PARTNERSHIP AND PARTNERS.** (1) A partnership may sue and be sued in the name of the partnership.

(2) An action may be brought against the partnership and, to the extent not inconsistent with section 306 of this act, any or all of the partners in the same action or in separate actions.

(3) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(4) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under section 306 of this act, and:

(a) A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(b) The partnership is a debtor in bankruptcy;

(c) The partner has agreed that the creditor need not exhaust partnership assets;

(d) A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(e) Liability is imposed on the partner by law or contract independent of the existence of the partnership.

(5) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under section 308 of this act.

**NEW SECTION. Sec. 308. LIABILITY OF PURPORTED PARTNER.** (1) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

(2) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(3) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

(4) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

(5) Except as otherwise provided in subsections (1) and (2) of this section, persons who are not partners as to each other are not liable as partners to other persons.

#### **ARTICLE 4 RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP**

**NEW SECTION. Sec. 401. PARTNER'S RIGHTS AND DUTIES.** (1) Each partner is deemed to have an account that is:

(a) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(b) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(2) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(3) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(4) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(5) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (3) or (4) of this section constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(6) Each partner has equal rights in the management and conduct of the partnership business.

(7) A partner may use or possess partnership property only on behalf of the partnership.

(8) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(9) A person may become a partner only with the consent of all of the partners.

(10) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(11) This section does not affect the obligations of a partnership to other persons under section 301 of this act.

**NEW SECTION. Sec. 402. DISTRIBUTIONS IN KIND.** A partner has no right to receive, and may not be required to accept, a distribution in kind.

**NEW SECTION. Sec. 403. PARTNER'S RIGHTS AND DUTIES WITH RESPECT TO INFORMATION.** (1) A partnership shall keep its books and records, if any, at its chief executive office.

(2) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a

reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(3) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

(a) Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this chapter; and

(b) On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

**NEW SECTION. See. 404. GENERAL STANDARDS OF PARTNER'S CONDUCT.** (1) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (2) and (3) of this section.

(2) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(a) To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

(b) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and

(c) To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(3) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(5) A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(6) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

(7) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

**NEW SECTION. Sec. 405. ACTIONS BY PARTNERSHIP AND PARTNERS.** (1) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(2) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

(a) Enforce the partner's rights under the partnership agreement;

(b) Enforce the partner's rights under this chapter, including:

(i) The partner's rights under section 401, 403, or 404 of this act;

(ii) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to section 701 of this act or enforce any other right under article 6 or 7 of this chapter; or

(iii) The partner's right to compel a dissolution and winding up of the partnership business under section 801 of this act or enforce any other right under article 8 of this chapter; or

(c) Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(3) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

**NEW SECTION. Sec. 406. CONTINUATION OF PARTNERSHIP BEYOND DEFINITE TERM OR PARTICULAR UNDERTAKING.** (1) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(2) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

## ARTICLE 5

### TRANSFEREES AND CREDITORS OF PARTNER

**NEW SECTION. Sec. 501. PARTNER NOT CO-OWNER OF PARTNERSHIP PROPERTY.** A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

**NEW SECTION. Sec. 502. PARTNER'S TRANSFERABLE INTEREST IN PARTNERSHIP.** The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

**NEW SECTION. Sec. 503. TRANSFER OF PARTNER'S TRANSFERABLE INTEREST.** (1) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

(a) Is permissible;

(b) Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and

(c) Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

(2) A transferee of a partner's transferable interest in the partnership has a right:

(a) To receive, in accordance with the transfer, allocations of profits and losses of the partnership and distributions to which the transferor would otherwise be entitled;

(b) To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(c) To seek under section 801(6) of this act a judicial determination that it is equitable to wind up the partnership business.

(3) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

(4) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in profits and losses of the partnership and distributions transferred.

(5) A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.

(6) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

**NEW SECTION. Sec. 504. PARTNER'S TRANSFERABLE INTEREST SUBJECT TO CHARGING ORDER.** (1) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(2) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.



(3) At any time before foreclosure, an interest charged may be redeemed:

(a) By the judgment debtor;

(b) With property other than partnership property, by one or more of the other partners; or

(c) With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

(4) This chapter does not deprive a partner of a right under exemption laws with respect to the interest in the partnership.

(5) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

## ARTICLE 6

### PARTNER'S DISSOCIATION

NEW SECTION. **Sec. 601. EVENTS CAUSING PARTNER'S DISSOCIATION.** A partner is dissociated from a partnership upon the occurrence of any of the following events:

(1) The partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;

(2) An event agreed to in the partnership agreement as causing the partner's dissociation;

(3) The partner's expulsion pursuant to the partnership agreement;

(4) The partner's expulsion by the unanimous vote of the other partners if:

(a) It is unlawful to carry on the partnership business with that partner;

(b) There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes or a court order charging the partner's interest which, in either case, has not been foreclosed;

(c) Within ninety days after the partnership notifies a corporate partner that it will be expelled because it has filed articles of dissolution, it has been administratively or judicially dissolved, or its right to conduct business has been suspended by the jurisdiction of its incorporation, and there is no revocation of the articles of dissolution, no reinstatement following its administrative dissolution, or reinstatement of its right to conduct business by the jurisdiction of its incorporation, as applicable; or

(d) A partnership or limited liability company that is a partner has been dissolved and its business is being wound up;

(5) On application by the partnership or another partner, the partner's expulsion by judicial determination because:

(a) The partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(b) The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 404 of this act; or

(c) The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;

(6) The partner's:

(a) Becoming a debtor in bankruptcy;

(b) Executing an assignment for the benefit of creditors;

(c) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(d) Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;

(7) In the case of a partner who is an individual:

(a) The partner's death;

(b) The appointment of a guardian or general conservator for the partner; or

(c) A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

(9) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(10) Termination of a partner who is not an individual, partnership, corporation, trust, or estate.

**NEW SECTION. Sec. 602. PARTNER'S POWER TO DISSOCIATE; WRONGFUL DISSOCIATION.** (1) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to section 601(1) of this act.

(2) A partner's dissociation is wrongful only if:

(a) It is in breach of an express provision of the partnership agreement; or

(b) In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(i) The partner withdraws by express will, unless the withdrawal follows within ninety days after another partner's dissociation by death or otherwise under section 601 (6) through (10) of this act or wrongful dissociation under this subsection;

(ii) The partner is expelled by judicial determination under section 601(5) of this act;

(iii) The partner is dissociated as the result of an event described in section 601(6) of this act; or

(iv) In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(3) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

**NEW SECTION. Sec. 603. EFFECT OF PARTNER'S DISSOCIATION.**

(1) If a partner's dissociation results in a dissolution and winding up of the partnership business, article 8 of this chapter applies; otherwise, article 7 of this chapter applies.

(2) Upon a partner's dissociation:

(a) The partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in section 803 of this act;

(b) The partner's duty of loyalty under section 404(2)(c) of this act terminates; and

(c) The partner's duty of loyalty under section 404(2) (a) and (b) of this act and duty of care under section 404(3) of this act continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to section 803 of this act.

**ARTICLE 7  
PARTNER'S DISSOCIATION WHEN  
BUSINESS NOT WOUND UP**

**NEW SECTION. Sec. 701. PURCHASE OF DISSOCIATED PARTNER'S INTEREST.** (1) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under section 801 of this act, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (2) of this section.

(2) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under section 807(2) of this act if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.

(3) Damages for wrongful dissociation under section 602(2) of this act, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(4) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under section 702 of this act.

(5) If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (3) of this section.

(6) If a deferred payment is authorized under subsection (8) of this section, the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (3) of this section, stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(7) The payment or tender required by subsection (5) or (6) of this section must be accompanied by the following:

(a) A statement of partnership assets and liabilities as of the date of dissociation;

(b) The latest available partnership balance sheet and income statement, if any;

(c) An explanation of how the estimated amount of the payment was calculated; and

(d) Written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (3) of this section, or other terms of the obligation to purchase.

(8) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(9) A dissociated partner may maintain an action against the partnership, pursuant to section 405(2)(b)(ii) of this act, to determine the buyout price of that partner's interest, any offsets under subsection (3) of this section, or other terms of the obligation to purchase. The action must be commenced within one hundred twenty days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (3) of this section, and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (8) of this section, the court shall also determine the security for payment and other terms of the obligation to purchase.

The court may assess reasonable attorneys' fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (7) of this section.

**NEW SECTION. Sec. 702. DISSOCIATED PARTNER'S POWER TO BIND AND LIABILITY TO PARTNERSHIP.** (1) For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under article 9 of this chapter, is bound by an act of the dissociated partner which would have bound the partnership under section 301 of this act before dissociation only if at the time of entering into the transaction the other party:

- (a) Reasonably believed that the dissociated partner was then a partner;
- (b) Did not have notice of the partner's dissociation; and
- (c) Is not deemed to have had knowledge under section 303(3) of this act or notice under section 704(3) of this act.

(2) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (1) of this section.

**NEW SECTION. Sec. 703. DISSOCIATED PARTNER'S LIABILITY TO OTHER PERSONS.** (1) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection (2) of this section.

(2) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under article 9 of this chapter, within two years after the partner's dissociation, only if the partner is liable for the obligation under section 306 of this act and at the time of entering into the transaction the other party:

- (a) Reasonably believed that the dissociated partner was then a partner;
- (b) Did not have notice of the partner's dissociation; and
- (c) Is not deemed to have had knowledge under section 303(3) of this act or notice under section 704(3) of this act.

(3) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(4) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

**NEW SECTION. Sec. 704. STATEMENT OF DISSOCIATION.** (1) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(2) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of section 303 (2) and (3) of this act.

(3) For the purposes of sections 702(1)(c) and 703(2)(c) of this act, a person not a partner is deemed to have notice of the dissociation ninety days after the statement of dissociation is filed.

**NEW SECTION. Sec. 705. CONTINUED USE OF PARTNERSHIP NAME.** Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

## ARTICLE 8 WINDING UP PARTNERSHIP BUSINESS

**NEW SECTION. Sec. 801. EVENTS CAUSING DISSOLUTION AND WINDING UP OF PARTNERSHIP BUSINESS.** A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

(1) In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under section 601 (2) through (10) of this act, of that partner's express will to withdraw as a partner, or on a later date specified by the partner;

(2) In a partnership for a definite term or particular undertaking:

(a) Within ninety days after a partner's dissociation by death or otherwise under section 601 (6) through (10) of this act or wrongful dissociation under section 602(2) of this act if a majority of the remaining partners decide to wind up the partnership business, and for purposes of this subsection a partner's rightful dissociation pursuant to section 602(2)(b)(i) of this act constitutes the expression of that partner's will to wind up the partnership business;

(b) The express will of all of the partners to wind up the partnership business;  
or

(c) The expiration of the term or the completion of the undertaking;

(3) An event agreed to in the partnership agreement resulting in the winding up of the partnership business;

(4) An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within ninety days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;

(5) On application by a partner, a judicial determination that:

(a) The economic purpose of the partnership is likely to be unreasonably frustrated;

(b) Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or

(c) It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

(6) On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:

(a) After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(b) At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

**NEW SECTION. Sec. 802. PARTNERSHIP CONTINUES AFTER DISSOLUTION.** (1) Subject to subsection (2) of this section, a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

(2) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:

(a) The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and

(b) The rights of a third party accruing under section 804(1) of this act or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

**NEW SECTION. Sec. 803. RIGHT TO WIND UP PARTNERSHIP BUSINESS.** (1) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the superior court, for good cause shown, may order judicial supervision of the winding up.

(2) The legal representative of the last surviving partner may wind up a partnership's business.

(3) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to section 807 of this act, settle disputes by mediation or arbitration, and perform other necessary acts.

**NEW SECTION. Sec. 804. PARTNER'S POWER TO BIND PARTNERSHIP AFTER DISSOLUTION.** Subject to section 805 of this act, a partnership is bound by a partner's act after dissolution that:

- (1) Is appropriate for winding up the partnership business; or
- (2) Would have bound the partnership under section 301 of this act before dissolution, if the other party to the transaction did not have notice of the dissolution.

**NEW SECTION. Sec. 805. STATEMENT OF DISSOLUTION.** (1) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(2) A statement of dissolution cancels all previously filed statements of partnership authority.

(3) For the purposes of sections 301 and 804 of this act, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution ninety days after it is filed.

(4) After filing a statement of dissolution, a dissolved partnership may file a statement of partnership authority which will operate with respect to a person not a partner as provided in section 303 (2) and (3) of this act in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

**NEW SECTION. Sec. 806. PARTNER'S LIABILITY TO OTHER PARTNERS AFTER DISSOLUTION.** (1) Except as otherwise provided in subsection (2) of this section, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under section 804 of this act.

(2) A partner who, with knowledge of the dissolution, incurs a partnership liability under section 804(2) of this act by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

**NEW SECTION. Sec. 807. SETTLEMENT OF ACCOUNTS AND CONTRIBUTIONS AMONG PARTNERS.** (1) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (2) of this section.

(2) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an



amount equal to any excess of the charges over the credits in the partner's account, except, in the case of a limited liability partnership the partner shall make such contribution only to the extent of his or her share of any unpaid partnership obligations for which the partner has personal liability under section 306 of this act.

(3) If a partner fails to contribute the full amount required under subsection (2) of this section, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under section 306 of this act. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under section 306 of this act.

(4) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under section 306 of this act.

(5) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(6) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

## ARTICLE 9 CONVERSIONS AND MERGERS

**NEW SECTION. Sec. 901. DEFINITIONS.** The definitions in this article apply throughout this article unless the context clearly requires otherwise:

(1) "General partner" means a partner in a partnership and a general partner in a limited partnership.

(2) "Limited partner" means a limited partner in a limited partnership.

(3) "Limited partnership" means a limited partnership created under the Washington uniform limited partnership act, predecessor law, or comparable law of another jurisdiction.

(4) "Partner" includes both a general partner and a limited partner.

**NEW SECTION. Sec. 902. CONVERSION OF PARTNERSHIP TO LIMITED PARTNERSHIP.** (1) A partnership may be converted to a limited partnership pursuant to this section.

(2) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

(3) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:

(a) A statement that the partnership was converted to a limited partnership from a partnership;

(b) Its former name; and

(c) A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(4) If the partnership was converted to a domestic limited partnership, the certificate must also include:

(a) The name of the limited partnership;

(b) The address of the office for records and the name and address of the agent for service of process appointed pursuant to RCW 25.10.040;

(c) The name and the geographical and mailing address of each general partner;

(d) The latest date upon which the limited partnership is to dissolve; and

(e) Any other matters the general partners determine to include therein.

(5) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(6) A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in the Washington uniform limited partnership act.

**NEW SECTION. Sec. 903. CONVERSION OF LIMITED PARTNERSHIP TO PARTNERSHIP.** (1) A limited partnership may be converted to a partnership pursuant to this section.

(2) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

(3) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

(4) The conversion takes effect when the certificate of limited partnership is canceled.

(5) A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. Except as otherwise provided in section 306 of this act, the partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

**NEW SECTION. Sec. 904. EFFECT OF CONVERSION; ENTITY UNCHANGED.** (1) A partnership or limited partnership that has been converted

pursuant to this article is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) All property owned by the converting partnership or limited partnership remains vested in the converted entity;

(b) All obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

(c) An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

**NEW SECTION. Sec. 905. MERGER OF PARTNERSHIPS.** (1) One or more domestic partnerships may merge with one or more domestic partnerships, domestic limited partnerships, domestic limited liability companies, or domestic corporations pursuant to a plan of merger approved or adopted as provided in section 906 of this act.

(2) The plan of merger must set forth:

(a) The name of each partnership, limited liability company, limited partnership, and corporation planning to merge and the name of the surviving partnership, limited liability company, limited partnership, or corporation into which the other partnership, limited liability company, limited partnership, or corporation plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the interests of each member of each limited liability company, the partnership interests in each partnership and each limited partnership, and the shares of each corporation party to the merger into the interests, shares, obligations, or other securities of the surviving or any other partnership, limited liability company, limited partnership, or corporation or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) Amendments to the certificate of formation of the surviving limited liability company;

(b) Amendments to the certificate of limited partnership of the surviving limited partnership;

(c) Amendments to the articles of incorporation of the surviving corporation; and

(d) Other provisions relating to the merger.

(4) If the plan of merger does not specify a delayed effective date, it shall become effective upon the filing of articles of merger. If the plan of merger specifies a delayed effective time and date, the plan of merger become effective at the time and date specified. If the plan of merger specifies a delayed effective date but no time is specified, the plan of merger is effective at the close of business on that date. A delayed effective date for a plan of merger may not be later than the ninetieth day after the date it is filed.

**NEW SECTION. Sec. 906. MERGER—PLAN—APPROVAL.** (1) Unless otherwise provided in the partnership agreement, approval of a plan of merger by a domestic partnership party to the merger shall occur when the plan is approved by all of the partners.

(2) If a domestic limited partnership is a party to the merger, the plan of merger shall be adopted and approved as provided in RCW 25.10.810.

(3) If a domestic limited liability company is a party to the merger, the plan of merger shall be adopted and approved as provided in RCW 25.15.400.

(4) If a domestic corporation is a party to the merger, the plan of merger shall be adopted and approved as provided in chapter 23B.11 RCW.

**NEW SECTION. Sec. 907. ARTICLES OF MERGER—FILING.** (1) Except as otherwise provided in subsection (2) of this section, after a plan of merger is approved or adopted, the surviving partnership, limited liability company, limited partnership, or corporation shall deliver to the secretary of state for filing articles of merger setting forth:

(a) The plan of merger;

(b) If the approval of any partners, members, or shareholders of one or more partnerships, limited liability companies, limited partnerships, or corporations party to the merger was not required, a statement to that effect; or

(c) If the approval of any partners, members, or shareholders of one or more of the partnerships, limited liability companies, limited partnerships, or corporations party to the merger was required, a statement that the merger was duly approved by such members, partners, and shareholders pursuant to RCW 25.15.400, section 906 of this act, or chapter 23B.11 RCW.

(2) If the merger involves only two or more partnerships and one or more of such partnerships has filed a statement of partnership authority with the secretary of state, the surviving partnership shall file articles of merger as provided in subsection (1) of this section.

**NEW SECTION. Sec. 908. EFFECT OF MERGER.** (1) When a merger takes effect:

(a) Every other partnership, limited liability company, limited partnership, or corporation that is party to the merger merges into the surviving partnership, limited liability company, limited partnership, or corporation and the separate existence of every partnership, limited liability company, limited partnership, or corporation except the surviving partnership, limited liability company, limited partnership, or corporation ceases;

(b) The title to all real estate and other property owned by each partnership, limited liability company, limited partnership, and corporation party to the merger is vested in the surviving partnership, limited liability company, limited partnership, or corporation without reversion or impairment;

(c) The surviving partnership, limited liability company, limited partnership, or corporation has all liabilities of each partnership, limited liability company, limited partnership, and corporation that is party to the merger;

(d) A proceeding pending against any partnership, limited liability company, limited partnership, or corporation that is party to the merger may be continued as if the merger did not occur or the surviving partnership, limited liability company, limited partnership, or corporation may be substituted in the proceeding for the partnership, limited liability company, limited partnership, or corporation whose existence ceased;

(e) The certificate of formation of the surviving limited liability company is amended to the extent provided in the plan of merger;

(f) The partnership agreement of the surviving limited partnership is amended to the extent provided in the plan of merger;

(g) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(h) The former members of every limited liability company party to the merger, the former holders of the partnership interests of every domestic partnership or limited partnership that is party to the merger, and the former holders of the shares of every domestic corporation that is party to the merger are entitled only to the rights provided in the plan of merger, or to their rights under this article, to their rights under RCW 25.10.900 through 25.10.955, or to their rights under chapter 23B.13 RCW.

(2) Unless otherwise agreed, a merger of a domestic partnership, including a domestic partnership which is not the surviving entity in the merger, shall not require the domestic partnership to wind up its affairs under article 8 of this chapter.

(3) Unless otherwise agreed, a merger of a domestic limited partnership, including a domestic limited partnership which is not the surviving entity in the merger, shall not require the domestic limited partnership to wind up its affairs under RCW 25.10.460 or pay its liabilities and distribute its assets under RCW 25.10.470.

(4) Unless otherwise agreed, a merger of a domestic limited liability company, including a domestic limited liability company which is not the surviving entity in the merger, shall not require the domestic limited liability company to wind up its affairs under RCW 25.15.295 or pay its liabilities and distribute its assets under RCW 25.15.300.

**NEW SECTION. Sec. 909. MERGER—FOREIGN AND DOMESTIC.** (1) One or more foreign partnerships, foreign limited liability companies, foreign limited partnerships, and foreign corporations may merge with one or more domestic partnerships, domestic limited liability companies, domestic limited partnerships, or domestic corporations if:

(a) The merger is permitted by the law of the jurisdiction under which each foreign partnership was organized, each foreign limited liability company was formed, each foreign limited partnership was organized, and each foreign corporation was incorporated, and each foreign partnership, foreign limited liability company, foreign limited partnership, and foreign corporation complies with that law in effecting the merger;

- (b) The surviving entity complies with section 907 of this act;
- (c) Each domestic limited liability company complies with RCW 25.15.400;
- (d) Each domestic limited partnership complies with RCW 25.10.810; and
- (e) Each domestic corporation complies with RCW 23B.11.080.

(2) Upon the merger taking effect, a surviving foreign limited liability company, limited partnership, or corporation is deemed to appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting members, partners or shareholders of each domestic limited liability company, domestic limited partnership, or domestic corporation party to the merger.

**NEW SECTION. Sec. 910. NONEXCLUSIVE.** This article is not exclusive. Partnerships, limited partnerships, limited liability companies, or corporations may be converted or merged in any other manner provided by law.

#### **ARTICLE 10 DISSENTERS' RIGHTS**

**NEW SECTION. Sec. 1001. DEFINITIONS.** The definitions in this section apply throughout this article, unless the context clearly requires otherwise.

(1) "Partnership" means the domestic partnership in which the dissenter holds or held a partnership interest, or the surviving partnership, limited liability company, limited partnership, or corporation by merger, whether foreign or domestic, of that partnership.

(2) "Dissenter" means a partner who is entitled to dissent from a plan of merger and who exercises that right when and in the manner required by this article.

(3) "Fair value," with respect to a dissenter's partnership interest, means the value of the partner's interest immediately before the effectuation of the merger to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the merger unless exclusion would be inequitable.

(4) "Interest" means interest from the effective date of the merger until the date of payment, at the average rate currently paid by the partnership on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

**NEW SECTION. Sec. 1002. PARTNER—DISSENT—PAYMENT OF FAIR VALUE.** (1) Except as provided in section 1004 or 1006(2) of this act, a partner in a domestic partnership is entitled to dissent from, and obtain payment of the fair value of the partner's interest in a partnership in the event of consummation of a plan of merger to which the partnership is a party as permitted by section 905 or 909 of this act.

(2) A partner entitled to dissent and obtain payment for the partner's interest in a partnership under this article may not challenge the merger creating the partner's entitlement unless the merger fails to comply with the procedural requirements imposed by this title, Title 23B RCW, RCW 25.10.800 through

25.10.840, or 25.15.430, as applicable, or the partnership agreement, or is fraudulent with respect to the partner or the partnership.

(3) The right of a dissenting partner in a partnership to obtain payment of the fair value of the partner's interest in the partnership shall terminate upon the occurrence of any one of the following events:

(a) The proposed merger is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the merger;

or

(c) The partner's demand for payment is withdrawn with the written consent of the partnership.

**NEW SECTION. Sec. 1003. DISSENTERS' RIGHTS—NOTICE—TIMING.**

(1) Not less than ten days prior to the approval of a plan of merger, the partnership must send a written notice to all partners who are entitled to vote on or approve the plan of merger that they may be entitled to assert dissenters' rights under this article. Such notice shall be accompanied by a copy of this article.

(2) The partnership shall notify in writing all partners not entitled to vote on or approve the plan of merger that the plan of merger was approved, and send them the dissenters' notice as required by section 1005 of this act.

**NEW SECTION. Sec. 1004. PARTNER—DISSENT—VOTING RESTRICTION.** A partner of a partnership who is entitled to vote on or approve the plan of merger and who wishes to assert dissenters' rights must not vote in favor of or approve the plan of merger. A partner who does not satisfy the requirements of this section is not entitled to payment for the partner's interest in the partnership under this article.

**NEW SECTION. Sec. 1005. PARTNERS—DISSENTERS' NOTICE—REQUIREMENTS.** (1) If the plan of merger is approved, the partnership shall deliver a written dissenters' notice to all partners who satisfied the requirements of section 1004 of this act.

(2) The dissenters' notice required by section 1003(2) of this act or by subsection (1) of this section must be sent within ten days after the approval of the plan of merger, and must:

(a) State where the payment demand must be sent;

(b) Inform partners as to the extent transfer of the partner's interest in the partnership will be restricted as permitted by section 1007 of this act after the payment demand is received;

(c) Supply a form for demanding payment;

(d) Set a date by which the partnership must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice under this section is delivered; and

(e) Be accompanied by a copy of this article.

**NEW SECTION. Sec. 1006. PARTNER—PAYMENT DEMAND—ENTITLEMENT.** (1) A partner who demands payment retains all other rights of a partner in the partnership until the proposed merger becomes effective.

(2) A partner in a partnership sent a dissenters' notice who does not demand payment by the date set in the dissenters' notice is not entitled to payment for the partner's interest in the partnership under this article.

**NEW SECTION. Sec. 1007. PARTNERS' INTERESTS—TRANSFER RESTRICTION.** The partnership agreement may restrict the transfer of partners' interests in the partnership from the date the demand for their payment is received until the proposed merger becomes effective or the restriction is released under this article.

**NEW SECTION. Sec. 1008. PAYMENT OF FAIR VALUE—REQUIREMENTS FOR COMPLIANCE.** (1) Within thirty days of the later of the date the proposed merger becomes effective, or the payment demand is received, the partnership shall pay each dissenter who complied with section 1006 of this act the amount the partnership estimates to be the fair value of the dissenting partner's interest in the partnership, plus accrued interest.

(2) The payment must be accompanied by:

(a) Copies of the financial statements for the partnership for its most recent fiscal year;

(b) An explanation of how the partnership estimated the fair value of the partner's interest in the partnership;

(c) An explanation of how the accrued interest was calculated;

(d) A statement of the dissenter's right to demand payment; and

(e) A copy of this article.

**NEW SECTION. Sec. 1009. MERGER—NOT EFFECTIVE WITHIN SIXTY DAYS—TRANSFER RESTRICTIONS.** (1) If the proposed merger does not become effective within sixty days after the date set for demanding payment, the partnership shall release any transfer restrictions imposed as permitted by section 1007 of this act.

(2) If, after releasing transfer restrictions, the proposed merger becomes effective, the partnership must send a new dissenters' notice as provided in sections 1003(2) and 1005 of this act and repeat the payment demand procedure.

**NEW SECTION. Sec. 1010. DISSENTER'S ESTIMATE OF FAIR VALUE—NOTICE.** (1) A dissenting partner may notify the partnership in writing of the dissenter's own estimate of the fair value of the dissenter's interest in the partnership, and amount of interest due, and demand payment of the dissenter's estimate, less any payment under section 1009 of this act, if:

(a) The dissenter believes that the amount paid is less than the fair value of the dissenter's interest in the partnership, or that the interest due is incorrectly calculated;

(b) The partnership fails to make payment within sixty days after the date set for demanding payment; or

(c) The partnership, having failed to effectuate the proposed merger, does not release the transfer restrictions imposed on the partners' interests as permitted by



section 1007 of this act within sixty days after the date set for demanding payment.

(2) A dissenter waives the right to demand payment under this section unless the dissenter notifies the partnership of the dissenter's demand in writing under subsection (1) of this section within thirty days after the partnership made payment for the dissenter's interest in the partnership.

**NEW SECTION. Sec. 1011. UNSETTLED DEMAND FOR PAYMENT—PROCEEDING—PARTIES—APPRAISERS.** (1) If a demand for payment under section 1006 of this act remains unsettled, the partnership shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the dissenting partner's interest in the partnership, and accrued interest. If the partnership does not commence the proceeding within the sixty-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The partnership shall commence the proceeding in the superior court. If the partnership is a domestic partnership, it shall commence the proceeding in the county where its chief executive office is maintained.

(3) The partnership shall make all dissenters, whether or not residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their partnership interests in the partnership and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The partnership may join as a party to the proceeding any partner who claims to be a dissenter but who has not, in the opinion of the partnership, complied with the provisions of this article. If the court determines that such partner has not complied with the provisions of this article, the partner shall be dismissed as a party.

(5) The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decisions on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(6) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of the dissenter's partnership interest in the partnership, plus interest, exceeds the amount paid by the partnership.

**NEW SECTION. Sec. 1012. UNSETTLED DEMAND FOR PAYMENT—COSTS—FEES AND EXPENSES OF COUNSEL.** (1) The court in a proceeding commenced under section 1011 of this act shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the partnership, except that the court may assess the costs against all or some of the dissenters, in

amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment.

(2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the partnership and in favor of any or all dissenters if the court finds the partnership did not substantially comply with the requirements of this article; or

(b) Against either the partnership or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this article.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the partnership, the court may award to these counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited.

## ARTICLE 11 LIMITED LIABILITY PARTNERSHIP

NEW SECTION. Sec. 1101. FORMATION—REGISTRATION—APPLICATION—FEE—FORMS. (1) A partnership which is not a limited liability partnership on the effective date of this act may become a limited liability partnership upon the approval of the terms and conditions upon which it becomes a limited liability partnership by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions, and by filing the applications required by subsection (2) of this section. A partnership which is a limited liability partnership on the effective date of this act continues as a limited liability partnership under this chapter.

(2) To become and to continue as a limited liability partnership, a partnership shall file with the secretary of state an application stating the name of the partnership; the address of its principal office; if the partnership's principal office is not located in this state, the address of a registered office and the name and address of a registered agent for service of process in this state which the partnership will be required to maintain; the number of partners; a brief statement of the business in which the partnership engages; any other matters that the partnership determines to include; and that the partnership thereby applies for status as a limited liability partnership.

(3) The application shall be accompanied by a fee of one hundred seventy-five dollars for each partnership.

(4) The secretary of state shall register as a limited liability partnership any partnership that submits a completed application with the required fee.

(5) A partnership registered under this section shall pay an annual fee, in each year following the year in which its application is filed, on a date and in an

amount specified by the secretary of state. The fee must be accompanied by a notice, on a form provided by the secretary of state, of the number of partners currently in the partnership and of any material changes in the information contained in the partnership's application for registration.

(6) Registration is effective immediately after the date an application is filed, and remains effective until:

(a) It is voluntarily withdrawn by filing with the secretary of state a written withdrawal notice executed by a majority of the partners or by one or more partners or other persons authorized to execute a withdrawal notice; or

(b) Thirty days after receipt by the partnership of a notice from the secretary of state, which notice shall be sent by first class mail, postage prepaid, that the partnership has failed to make timely payment of the annual fee specified in subsection (5) of this section, unless the fee is paid within such a thirty-day period.

(7) The status of a partnership as a limited liability partnership, and the liability of the partners thereof, shall not be affected by:

(a) Errors in the information stated in an application under subsection (2) of this section or a notice under subsection (6) of this section; or (b) changes after the filing of such an application or notice in the information stated in the application or notice.

(8) The secretary of state may provide forms for the application under subsection (2) of this section or a notice under subsection (6) of this section.

**NEW SECTION. Sec. 1102. NAME.** The name of a limited liability partnership shall contain the words "limited liability partnership" or the abbreviation "L.L.P." or "LLP" as the last words or letters of its name.

**NEW SECTION. Sec. 1103. RENDERING PROFESSIONAL SERVICES.**  
(1) A person or group of persons licensed or otherwise legally authorized to render professional services, as defined in RCW 18.100.030, within this state may organize and become a member or members of a limited liability partnership under the provisions of this chapter for the purposes of rendering professional service. Nothing in this section prohibits a person duly licensed or otherwise legally authorized to render professional services in any jurisdiction other than this state from becoming a member of a limited liability partnership organized for the purpose of rendering the same professional services. Nothing in this section prohibits a limited liability partnership from rendering professional services outside this state through individuals who are not duly licensed or otherwise legally authorized to render such professional services within this state.

(2)(a) Notwithstanding any other provision of this chapter, health care professionals who are licensed or certified pursuant to chapters 18.06, 18.19, 18.22, 18.25, 18.29, 18.34, 18.35, 18.36A, 18.50, 18.53, 18.55, 18.64, 18.79, 18.83, 18.89, 18.108, and 18.138 RCW may join and render their individual professional services through one limited liability partnership and are to be considered, for the purpose of forming a limited liability partnership, as rendering

the "same specific professional services" or "same professional services" or similar terms.

(b) Notwithstanding any other provision of this chapter, health care professionals who are licensed pursuant to chapters 18.57 and 18.71 RCW may join and render their individual professional services through one limited liability partnership and are to be considered, for the purpose of forming a limited liability partnership, as rendering the "same specific professional services" or "same professional services" or similar terms.

(c) Formation of a limited liability partnership under this subsection does not restrict the application of the uniform disciplinary act under chapter 18.130 RCW, or any applicable health care professional statutes under Title 18 RCW, including but not limited to restrictions on persons practicing a health profession without being appropriately credentialed and persons practicing beyond the scope of their credential.

## ARTICLE 12

### FOREIGN LIMITED LIABILITY PARTNERSHIP

**NEW SECTION. Sec. 1201. LAW GOVERNING FOREIGN LIMITED LIABILITY PARTNERSHIP.** (1) The law under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and, except as otherwise provided in section 306(4) of this act, the liability of partners for obligations of the partnership.

(2) A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of this state.

(3) A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this state as a limited liability partnership.

**NEW SECTION. Sec. 1202. STATEMENT OF FOREIGN QUALIFICATION.** Before transacting business in this state, a foreign limited liability partnership must register with the secretary of state under this chapter in the same manner as a limited liability partnership, except that if the foreign limited liability partnership's name contains the words "registered limited liability partnership" or the abbreviation "R.L.L.P." or "RLLP," it may include those words or abbreviations in its application with the secretary of state.

**NEW SECTION. Sec. 1203. EFFECT OF FAILURE TO QUALIFY.** (1) A foreign limited liability partnership transacting business in this state may not maintain an action or proceeding in this state unless it has in effect a registration as a foreign limited liability partnership.

(2) The failure of a foreign limited liability partnership to have in effect a registration as a foreign limited liability partnership does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this state.

(3) A limitation on personal liability of a partner is not waived solely by transacting business in this state without registration as a foreign limited liability partnership.

(4) If a foreign limited liability partnership transacts business in this state without a registration as a foreign limited liability partnership, the secretary of state is its agent for service of process with respect to a right of action arising out of the transaction of business in this state.

**NEW SECTION. Sec. 1204. ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS.** (1) Activities of a foreign limited liability partnership which do not constitute transacting business for the purpose of this article include:

- (a) Maintaining, defending, or settling an action or proceeding;
- (b) Holding meetings of its partners or carrying on any other activity concerning its internal affairs;
- (c) Maintaining bank accounts;
- (d) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities;
- (e) Selling through independent contractors;
- (f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (g) Creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;
- (h) Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
- (i) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions; and
- (j) Transacting business in interstate commerce.

(2) For purposes of this article, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (1) of this section, constitutes transacting business in this state.

(3) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this state.

**NEW SECTION. Sec. 1205. ACTION BY ATTORNEY GENERAL.** The attorney general may maintain an action to restrain a foreign limited liability partnership from transacting business in this state in violation of this chapter.

**ARTICLE 13**  
**MISCELLANEOUS PROVISIONS**

**NEW SECTION, Sec. 1301. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

**NEW SECTION, Sec. 1302. SHORT TITLE.** This chapter may be cited as the Washington revised uniform partnership act.

**NEW SECTION, Sec. 1303. SEVERABILITY CLAUSE.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION, Sec. 1304. APPLICABILITY.** (1) Before January 1, 1999, this chapter governs only a partnership formed:

(a) After the effective date of this act, unless that partnership is continuing the business of a dissolved partnership under RCW 25.04.410; and

(b) Before the effective date of this act, that elects, as provided by subsection (3) of this section, to be governed by this chapter.

(2) Effective January 1, 1999, this chapter governs all partnerships.

(3) Before January 1, 1999, a partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by this chapter. The provisions of this chapter relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one year preceding the partnership's election to be governed by this chapter, only if the third party knows or has received a notification of the partnership's election to be governed by this chapter.

**NEW SECTION, Sec. 1305. SAVINGS CLAUSE.** This act does not affect an action or proceeding commenced or right accrued before the effective date of this act.

**NEW SECTION, Sec. 1306. ESTABLISHMENT OF FILING FEES AND MISCELLANEOUS CHARGES.** (1) The secretary of state shall adopt rules establishing fees which shall be charged and collected for:

(a) Filing of a statement;

(b) Filing of a certified copy of a statement that is filed in an office in another state;

(c) Filing amendments to any of the foregoing or any other certificate, statement, or report authorized or permitted to be filed; and

(d) Copies, certified copies, certificates, and expedited filings or other special services.

(2) In the establishment of a fee schedule, the secretary of state shall, insofar as is possible and reasonable, be guided by the fee schedule provided for

corporations covered by Title 23B RCW. Fees for copies, certified copies, and certificates of record shall be as provided for in RCW 23B.01.220.

(3) All fees collected by the secretary of state shall be deposited with the state treasurer pursuant to law.

**NEW SECTION. Sec. 1307. AUTHORITY TO ADOPT RULES.** The secretary of state shall adopt such rules as are necessary to implement the keeping of records required by this chapter.

**NEW SECTION. Sec. 1308. REPEALERS.** The following acts or parts of acts are each repealed:

- (1) RCW 25.04.010 and 1955 c 15 s 25.04.010;
- (2) RCW 25.04.020 and 1985 c 8 s 2;
- (3) RCW 25.04.030 and 1955 c 15 s 25.04.030;
- (4) RCW 25.04.040 and 1955 c 15 s 25.04.040;
- (5) RCW 25.04.050 and 1955 c 15 s 25.04.050;
- (6) RCW 25.04.060 and 1955 c 15 s 25.04.060;
- (7) RCW 25.04.070 and 1973 1st ex.s. c 154 s 24 & 1955 c 15 s 25.04.070;
- (8) RCW 25.04.080 and 1955 c 15 s 25.04.080;
- (9) RCW 25.04.090 and 1955 c 15 s 25.04.090;
- (10) RCW 25.04.100 and 1955 c 15 s 25.04.100;
- (11) RCW 25.04.110 and 1955 c 15 s 25.04.110;
- (12) RCW 25.04.120 and 1955 c 15 s 25.04.120;
- (13) RCW 25.04.130 and 1955 c 15 s 25.04.130;
- (14) RCW 25.04.140 and 1955 c 15 s 25.04.140;
- (15) RCW 25.04.150 and 1985 c 8 s 3;
- (16) RCW 25.04.160 and 1955 c 15 s 25.04.160;
- (17) RCW 25.04.170 and 1955 c 15 s 25.04.170;
- (18) RCW 25.04.180 and 1955 c 15 s 25.04.180;
- (19) RCW 25.04.190 and 1955 c 15 s 25.04.190;
- (20) RCW 25.04.200 and 1955 c 15 s 25.04.200;
- (21) RCW 25.04.210 and 1955 c 15 s 25.04.210;
- (22) RCW 25.04.220 and 1955 c 15 s 25.04.220;
- (23) RCW 25.04.230 and 1955 c 15 s 25.04.230;
- (24) RCW 25.04.240 and 1955 c 15 s 25.04.240;
- (25) RCW 25.04.250 and 1973 1st ex.s. c 154 s 25 & 1955 c 15 s 25.04.250;
- (26) RCW 25.04.260 and 1955 c 15 s 25.04.260;
- (27) RCW 25.04.270 and 1955 c 15 s 25.04.270;
- (28) RCW 25.04.280 and 1955 c 15 s 25.04.280;
- (29) RCW 25.04.290 and 1955 c 15 s 25.04.290;
- (30) RCW 25.04.300 and 1955 c 15 s 25.04.300;
- (31) RCW 25.04.310 and 1955 c 15 s 25.04.310;
- (32) RCW 25.04.320 and 1955 c 15 s 25.04.320;
- (33) RCW 25.04.330 and 1955 c 15 s 25.04.330;
- (34) RCW 25.04.340 and 1955 c 15 s 25.04.340;

- (35) RCW 25.04.350 and 1955 c 15 s 25.04.350;
- (36) RCW 25.04.360 and 1955 c 15 s 25.04.360;
- (37) RCW 25.04.370 and 1955 c 15 s 25.04.370;
- (38) RCW 25.04.380 and 1955 c 15 s 25.04.380;
- (39) RCW 25.04.390 and 1955 c 15 s 25.04.390;
- (40) RCW 25.04.400 and 1955 c 15 s 25.04.400;
- (41) RCW 25.04.410 and 1955 c 15 s 25.04.410;
- (42) RCW 25.04.420 and 1955 c 15 s 25.04.420;
- (43) RCW 25.04.430 and 1955 c 15 s 25.04.430;
- (44) RCW 25.04.700 and 1995 c 337 s 1;
- (45) RCW 25.04.705 and 1995 c 337 s 2;
- (46) RCW 25.04.710 and 1995 c 337 s 3;
- (47) RCW 25.04.715 and 1995 c 337 s 4;
- (48) RCW 25.04.720 and 1997 c 390 s 5, 1996 c 231 s 4, & 1995 c 337 s 5;
- (49) RCW 25.04.725 and 1995 c 337 s 6;
- (50) RCW 25.04.730 and 1995 c 337 s 7;
- (51) RCW 25.04.735 and 1995 c 337 s 8;
- (52) RCW 25.04.740 and 1995 c 337 s 9;
- (53) RCW 25.04.745 and 1995 c 337 s 10; and
- (54) RCW 25.04.750 and 1995 c 337 s 11.

**Sec. I309.** RCW 43.07.120 and 1994 c 211 s 1310 and 1994 c 60 s 5 are each reenacted and amended to read as follows:

(1) The secretary of state shall establish by rule and collect the fees in this subsection:

- (a) For a copy of any law, resolution, record, or other document or paper on file in the secretary's office;
- (b) For any certificate under seal;
- (c) For filing and recording trademark;
- (d) For each deed or patent of land issued by the governor;
- (e) For recording miscellaneous records, papers, or other documents.

(2) The secretary of state may adopt rules under chapter 34.05 RCW establishing reasonable fees for the following services rendered under Title 23B RCW, chapter 18.100, 19.77, 23.86, 23.90, 24.03, 24.06, 24.12, 24.20, 24.24, 24.28, 24.36, 25.15, ~~((or))~~ 25.10, or chapter 25.— (sections 101 through 1307 of this act) RCW:

- (a) Any service rendered in-person at the secretary of state's office;
- (b) Any expedited service;
- (c) The electronic or facsimile transmittal of information from corporation records or copies of documents;
- (d) The providing of information by micrographic or other reduced-format compilation;
- (e) The handling of checks, drafts, or credit or debit cards upon adoption of rules authorizing their use for which sufficient funds are not on deposit; and
- (f) Special search charges.



(3) To facilitate the collection of fees, the secretary of state may establish accounts for deposits by persons who may frequently be assessed such fees to pay the fees as they are assessed. The secretary of state may make whatever arrangements with those persons as may be necessary to carry out this section.

(4) The secretary of state may adopt rules for the use of credit or debit cards for payment of fees.

(5) No member of the legislature, state officer, justice of the supreme court, judge of the court of appeals, or judge of the superior court shall be charged for any search relative to matters pertaining to the duties of his or her office; nor may such official be charged for a certified copy of any law or resolution passed by the legislature relative to his or her official duties, if such law has not been published as a state law.

Sec. 1310. RCW 23B.11.080 and 1991 c 269 s 38 are each amended to read as follows:

(1) One or more domestic corporations may merge with one or more limited liability companies, partnerships, or limited partnerships if:

(a) The board of directors of each corporation adopts and the shareholders of each corporation approve, if approval would be necessary, the plan of merger as required by RCW 23B.11.030; ~~((and))~~

(b) The partners of each limited partnership approve the plan of merger as required by RCW 25.10.810;

(c) The partners of each partnership approve the plan of merger as required by section 906 of this act; and

(d) The members of each limited liability company approve, if approval is necessary, the plan of merger as required by RCW 25.15.400.

(2) The plan of merger must set forth:

(a) The name of each limited liability company, partnership, corporation, and limited partnership planning to merge and the name of the surviving limited liability company, partnership, corporation, or limited partnership into which each other limited liability company, partnership, corporation, or limited partnership plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the shares of each corporation, the member interests of each limited liability company, and the partnership interests ~~((of))~~ in each partnership and each limited partnership into shares, limited liability company member interests, partnership interests, obligations or other securities of the surviving limited liability company, partnership, corporation, or limited partnership, or into cash or other property, including shares, obligations, or securities of any other limited liability company, partnership, or corporation, and partnership interests, obligations, or securities of any other limited partnership, in whole or in part.

(3) The plan of merger may set forth:

(a) Amendments to the articles of incorporation of the surviving corporation;

(b) Amendments to the certificate of limited partnership of the surviving limited partnership; and

(c) Other provisions relating to the merger.

**Sec. 1311.** RCW 23B.11.090 and 1991 c 269 s 39 are each amended to read as follows:

After a plan of merger for one or more corporations and one or more limited partnerships, one or more partnerships, or one or more limited liability companies is approved by the shareholders of each corporation (or adopted by the board of directors of any corporation for which shareholder approval is not required), ~~((and))~~ is approved by the partners for each limited partnership as required by RCW 25.10.810, is approved by the partners of each partnership as required by section 907 of this act, or is approved by the members of each limited liability company as required by RCW 25.15.400, the surviving entity must:

(1) If the surviving entity is a corporation, file with the secretary of state articles of merger setting forth:

(a) The plan of merger;

(b) A statement that the merger was duly approved by the shareholders of each corporation pursuant to RCW 23B.11.030 (or a statement that shareholder approval was not required for a merging corporation); and

(c) A statement that the merger was duly approved by the partners of each limited partnership pursuant to RCW 25.10.810.

(2) If the surviving entity is a limited partnership, comply with the requirements in RCW 25.10.820.

(3) If the surviving entity is a partnership, comply with the requirements in section 907 of this act.

(4) If the surviving entity is a limited liability company, comply with the requirements in RCW 25.15.405.

**Sec. 1312.** RCW 23B.11.100 and 1991 c 269 s 40 are each amended to read as follows:

When a merger of one or more corporations ~~((and))~~, one or more limited partnerships, one or more partnerships, or one or more limited liability companies takes effect, and a corporation is the surviving entity:

(1) Every other corporation ~~((and))~~, every limited partnership, every partnership, and every limited liability company party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation, and every limited partnership, partnership, and limited liability company, ceases;

(2) The title to all real estate and other property owned by each corporation ~~((and))~~, limited partnership, partnership, and limited liability company party to the merger is vested in the surviving corporation without reversion or impairment;

(3) The surviving corporation has all the liabilities of each corporation ~~((and))~~, limited partnership, partnership, and limited liability company party to the merger;

(4) A proceeding pending against any corporation ((~~or~~)), limited partnership, partnership, or limited liability company party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation ((~~or~~)), limited partnership, partnership, or limited liability company whose existence ceased;

(5) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger;

(6) The former holders of the shares of every corporation party to the merger are entitled only to the rights provided in the plan of merger or to their rights under chapter 23B.13 RCW; and

(7) The former holders of partnership interests of every limited partnership or partnership party to the merger and the former holders of member interests of every limited liability company party to the merger are entitled only to the rights provided in the plan of merger or to their rights under chapter 25.10 RCW.

Sec. 1313. RCW 23B.11.110 and 1991 c 269 s 41 are each amended to read as follows:

(1) One or more foreign limited partnerships ((~~and one or more~~)), foreign corporations, foreign partnerships, and foreign limited liability companies may merge with one or more domestic partnerships, domestic limited liability companies, domestic limited partnerships, or domestic corporations, provided that:

(a) The merger is permitted by the law of the jurisdiction under which each foreign limited partnership was organized and the law of the state or country under which each foreign corporation was incorporated and each foreign limited partnership or foreign corporation complies with that law in effecting the merger;

(b) If the surviving entity is a foreign or domestic corporation, that corporation complies with RCW 23B.11.090;

(c) If the surviving entity is a foreign or domestic limited partnership, that limited partnership complies with RCW 25.10.820;

(d) Each domestic corporation complies with RCW 23B.11.080; ((~~and~~))

(e) Each domestic limited partnership complies with RCW 25.10.810;

(f) Each domestic limited liability company complies with RCW 25.15.400;  
and

(g) Each domestic partnership complies with section 906 of this act.

(2) Upon the merger taking effect, a surviving foreign corporation ((~~or~~)), foreign limited partnership, foreign limited liability corporation, or foreign partnership is deemed:

(a) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders or partners of each domestic corporation ((~~or~~)), domestic limited partnership, domestic limited liability company, or domestic partnership party to the merger; and

(b) To agree that it will promptly pay to the dissenting shareholders or partners of each domestic corporation ((~~or~~)), domestic limited partnership,

domestic limited liability company, or domestic partnership party to the merger the amount, if any, to which they are entitled under chapter 23B.13 RCW, in the case of dissenting shareholders, or under chapter 25.10, 25.15, or 25.— (sections 101 through 1307 of this act) RCW, in the case of dissenting partners.

Sec. 1314. RCW 25.10.800 and 1991 c 269 s 11 are each amended to read as follows:

(1) One or more domestic limited partnerships may merge with one or more domestic limited partnerships ((or)), domestic corporations, domestic partnerships, or domestic limited liability companies pursuant to a plan of merger approved or adopted as provided in RCW 25.10.810.

(2) The plan of merger must set forth:

(a) The name of each limited partnership ((and)), corporation, partnership, or limited liability company planning to merge and the name of the surviving limited partnership ((or)), corporation, partnership, or limited liability company into which the other limited partnership ((or)), corporation, partnership, or limited liability company plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the partnership interests of each limited partnership and each partnership, and the member interests of each limited liability company, and the shares of each corporation party to the merger into the partnership interests, shares, member interests, obligations, or other securities of the surviving or any other limited partnership ((or)), partnership, corporation, or limited liability company or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) Amendments to the certificate of limited partnership of the surviving limited partnership;

(b) Amendments to the articles of incorporation of the surviving corporation; ((and))

(c) Amendments to the certificate of formation of the surviving limited liability company; and

(d) Other provisions relating to the merger.

(4) If the plan of merger does not specify a delayed effective date, it shall become effective upon the filing of articles of merger. If the plan of merger specifies a delayed effective time and date, the plan of merger becomes effective at the time and date specified. If the plan of merger specifies a delayed effective date but no time is specified, the plan of merger is effective at the close of business on that date. A delayed effective date for a plan of merger may not be later than the ninetieth day after the date it is filed.

Sec. 1315. RCW 25.10.810 and 1991 c 269 s 13 are each amended to read as follows:

(1) Unless otherwise provided in its partnership agreement, approval of a plan of merger by a domestic limited partnership party to a merger shall occur when the plan is approved (a) by all general partners of such limited partnership, and

(b) by the limited partners or, if there is more than one class of limited partners, then by each class or group of limited partners of such limited partnership, in either case, by limited partners who own more than fifty percent of the then current percentage or other interest in the profits of such limited partnership owned by all limited partners or by the limited partners in each class or group, as appropriate.

(2) If a domestic corporation is a party to the merger, the plan of merger shall be adopted and approved as provided in chapter 23B.11 RCW.

(3) If a domestic partnership is a party to the merger, the plan of merger shall be approved as provided in section 906 of this act.

(4) If a domestic limited liability company is a party to the merger, the plan of merger shall be approved as provided in RCW 25.15.400.

Sec. 1316. RCW 25.10.820 and 1991 c 269 s 14 are each amended to read as follows:

After a plan of merger is approved or adopted, the surviving limited partnership ~~((or)), corporation, partnership, or limited liability company~~ shall deliver to the secretary of state for filing articles of merger setting forth:

(1) The plan of merger;

(2) If the approval of any partners ~~((or)), shareholders, or members~~ of one or more limited partnerships ~~((or)), corporations, partnerships, or limited liability companies~~ party to the merger was not required, a statement to that effect; or

(3) If the approval of any partners ~~((or)), shareholders, or members~~ of one or more of the limited partnerships ~~((or)), corporations, partnerships, or limited liability companies~~ party to the merger was required, a statement that the merger was duly approved by such partners ~~((and)), shareholders, and members~~ pursuant to RCW 25.10.810 ~~((or)), chapter 23B.11 RCW, chapter 25.15 RCW, or section 906 of this act.~~

Sec. 1317. RCW 25.10.830 and 1991 c 269 s 15 are each amended to read as follows:

(1) When a merger takes effect:

(a) Every other ~~partnership, limited partnership ((or)), corporation, or limited liability company~~ that is party to the merger merges into the surviving ~~partnership, limited partnership ((or)), corporation, or limited liability company~~ and the separate existence of every ~~partnership, limited partnership ((and)), corporation, and limited liability company~~ except the surviving ~~partnership, limited partnership ((or)), corporation, or limited liability company~~ ceases;

(b) The title to all real estate and other property owned by each ~~partnership, limited partnership ((and)), corporation, and limited liability company~~ party to the merger is vested in the surviving ~~partnership, limited partnership ((or)), corporation, or limited liability company~~ without reversion or impairment;

(c) The surviving ~~partnership, limited partnership ((or)), corporation, or limited liability company~~ has all liabilities of each ~~partnership, limited partnership ((and)), corporation, and limited liability company~~ that is party to the merger;

(d) A proceeding pending against any partnership, limited partnership ((or)), corporation, or limited liability company that is party to the merger may be continued as if the merger did not occur or the surviving partnership, limited partnership ((or)), corporation, or limited liability company may be substituted in the proceeding for the partnership, limited partnership ((or)), corporation, or limited liability company whose existence ceased;

(e) The partnership agreement of the surviving limited partnership is amended to the extent provided in the plan of merger;

(f) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; ~~((and))~~

(g) The certificate of formation of the surviving limited liability company is amended to the extent provided in the plan of merger; and

(h) The former holders of the partnership interests of every domestic partnership or limited partnership that is party to the merger and the former holders of the shares of every domestic corporation that is party to the merger and the former holders of member interests of every domestic limited liability company are entitled only to the rights provided in the articles of merger or to their rights under RCW 25.10.900 through 25.10.955 ((or)), to the rights under chapter 23B.13 RCW, to the rights under chapter 25.— RCW (sections 101 through 1307 of this act), or to the rights under RCW 25.15.425 through 25.15.480.

(2) Unless otherwise agreed, a merger of a domestic limited partnership, including a domestic limited partnership which is not the surviving entity in the merger, shall not require the domestic limited partnership to wind up its affairs under RCW 25.10.460 or pay its liabilities and distribute its assets under RCW 25.10.470.

(3) Unless otherwise agreed, a merger of a domestic partnership, including a domestic partnership which is not the surviving entity in the merger, shall not require the domestic partnership to wind up its affairs under article 8 of chapter 25.— RCW (sections 101 through 1307 of this act).

(4) Unless otherwise agreed, a merger of a domestic limited liability company, including a domestic limited liability company which is not the surviving entity in the merger, shall not require the domestic limited liability company to wind up its affairs under article 8 of chapter 25.15 RCW.

Sec. 1318. RCW 25.10.840 and 1991 c 269 s 16 are each amended to read as follows:

(1) One or more foreign limited partnerships, foreign partnerships, foreign limited liability companies, and one or more foreign corporations may merge with one or more domestic partnerships, domestic limited partnerships, domestic limited liability companies, or domestic corporations if:

(a) The merger is permitted by the law of the jurisdiction under which each foreign limited partnership was organized, and each foreign corporation was incorporated, and each foreign partnership, foreign limited partnership, foreign

limited liability company, and foreign corporation complies with that law in effecting the merger;

(b) The surviving entity complies with RCW 25.10.820 and section 907 of this act;

(c) Each domestic limited partnership complies with RCW 25.10.810; ~~((and))~~

(d) Each domestic corporation complies with RCW 23B.11.080; and

(e) Each domestic limited liability company complies with RCW 25.15.400.

(2) Upon the merger taking effect, a surviving foreign partnership, foreign limited partnership, foreign limited liability company, or foreign corporation is deemed to appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting partners or shareholders of each domestic partnership, domestic limited partnership, domestic limited liability company, or domestic corporation party to the merger.

Sec. 1319. RCW 25.15.395 and 1994 c 211 s 1101 are each amended to read as follows:

(1) One or more domestic limited liability companies may merge with one or more domestic partnerships, domestic limited partnerships, domestic limited liability companies, or domestic corporations pursuant to a plan of merger approved or adopted as provided in RCW 25.15.400.

(2) The plan of merger must set forth:

(a) The name of each partnership, limited liability company, limited partnership, and corporation planning to merge and the name of the surviving partnership, limited liability company, limited partnership, or corporation into which the other partnership, limited liability company, limited partnership, or corporation plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the interests of each member of each limited liability company, the partnership interests in each partnership or limited partnership, and the shares of each corporation party to the merger into the interests, shares, obligations, or other securities of the surviving or any other partnership, limited liability company, limited partnership, or corporation or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) Amendments to the certificate of formation of the surviving limited liability company;

(b) Amendments to the certificate of limited partnership of the surviving limited partnership;

(c) Amendments to the articles of incorporation of the surviving corporation; and

(d) Other provisions relating to the merger.

(4) If the plan of merger does not specify a delayed effective date, it shall become effective upon the filing of articles of merger. If the plan of merger specifies a delayed effective time and date, the plan of merger becomes effective at the time and date specified. If the plan of merger specifies a delayed effective

date but no time is specified, the plan of merger is effective at the close of business on that date. A delayed effective date for a plan of merger may not be later than the ninetieth day after the date it is filed.

**Sec. 1320.** RCW 25.15.400 and 1994 c 211 s 1102 are each amended to read as follows:

(1) Unless otherwise provided in the limited liability company agreement, approval of a plan of merger by a domestic limited liability company party to the merger shall occur when the plan is approved by the members, or if there is more than one class or group of members, then by each class or group of members, in either case, by members contributing more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to RCW 25.15.135) of the contributions made, or obligated to be made, by all members or by the members in each class or group, as appropriate.

(2) If a domestic limited partnership is a party to the merger, the plan of merger shall be adopted and approved as provided in RCW 25.10.810.

(3) If a domestic corporation is a party to the merger, the plan of merger shall be adopted and approved as provided in chapter 23B.11 RCW.

(4) If a domestic partnership is a party to the merger, the plan of merger must be approved as provided in section 906 of this act.

**Sec. 1321.** RCW 25.15.405 and 1994 c 211 s 1103 are each amended to read as follows:

After a plan of merger is approved or adopted, the surviving partnership, limited liability company, limited partnership, or corporation shall deliver to the secretary of state for filing articles of merger setting forth:

(1) The plan of merger;

(2) If the approval of any members, partners, or shareholders of one or more partnerships, limited liability companies, limited partnerships, or corporations party to the merger was not required, a statement to that effect; or

(3) If the approval of any members, partners, or shareholders of one or more of the partnerships, limited liability companies, limited partnerships, or corporations party to the merger was required, a statement that the merger was duly approved by such members, partners, and shareholders pursuant to section 906 of this act, RCW 25.15.400, 25.10.810, or chapter 23B.11 RCW.

**Sec. 1322.** RCW 25.15.410 and 1994 c 211 s 1104 are each amended to read as follows:

(1) When a merger takes effect:

(a) Every other partnership, limited liability company, limited partnership, or corporation that is party to the merger merges into the surviving partnership, limited liability company, limited partnership, or corporation and the separate existence of every partnership, limited liability company, limited partnership, or corporation except the surviving partnership, limited liability company, limited partnership, or corporation ceases;



(b) The title to all real estate and other property owned by each partnership, limited liability company, limited partnership, and corporation party to the merger is vested in the surviving partnership, limited liability company, limited partnership, or corporation without reversion or impairment;

(c) The surviving partnership, limited liability company, limited partnership, or corporation has all liabilities of each partnership, limited liability company, limited partnership, and corporation that is party to the merger;

(d) A proceeding pending against any partnership, limited liability company, limited partnership, or corporation that is party to the merger may be continued as if the merger did not occur or the surviving partnership, limited liability company, limited partnership, or corporation may be substituted in the proceeding for the partnership, limited liability company, limited partnership, or corporation whose existence ceased;

(e) The certificate of formation of the surviving limited liability company is amended to the extent provided in the plan of merger;

(f) The partnership agreement of the surviving limited partnership is amended to the extent provided in the plan of merger;

(g) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(h) The former members of every limited liability company party to the merger, holders of the partnership interests of every domestic partnership or domestic limited partnership that is party to the merger, and the former holders of the shares of every domestic corporation that is party to the merger are entitled only to the rights provided in the plan of merger, ~~((or))~~ to their rights under chapter 25.—RCW (sections 101 through 1307 of this act), to their rights under this article, to their rights under RCW 25.10.900 through 25.10.955, or to their rights under chapter 23B.13 RCW.

(2) Unless otherwise agreed, a merger of a domestic limited liability company, including a domestic limited liability company which is not the surviving entity in the merger, shall not require the domestic limited liability company to wind up its affairs under RCW 25.15.295 or pay its liabilities and distribute its assets under RCW 25.15.300.

(3) Unless otherwise agreed, a merger of a domestic limited partnership, including a domestic limited partnership which is not the surviving entity in the merger, shall not require the domestic limited partnership to wind up its affairs under RCW 25.10.460 or pay its liabilities and distribute its assets under RCW 25.10.470.

(4) Unless otherwise agreed, a merger of a domestic partnership, including a domestic partnership which is not the surviving entity in the merger, shall not require the domestic partnership to wind up its affairs under article 8 of chapter 25.—RCW (sections 101 through 1307 of this act).

(5) Unless otherwise agreed, a merger of a domestic limited liability company, including a domestic limited liability company which is not the

surviving entity in the merger, shall not require the domestic limited liability company to wind up its affairs under article 8 of chapter 25.15 RCW.

Sec. 1323. RCW 25.15.415 and 1994 c 211 s 1105 are each amended to read as follows:

(1) One or more foreign partnerships, one or more foreign limited liability companies, one or more foreign limited partnerships, and one or more foreign corporations may merge with one or more domestic partnerships, domestic limited liability companies, domestic limited partnerships, or domestic corporations if:

(a) The merger is permitted by the law of the jurisdiction under which each foreign limited liability company was formed, each foreign partnership or foreign limited partnership was organized, and each foreign corporation was incorporated, and each foreign limited liability company, foreign partnership, foreign limited partnership, and foreign corporation complies with that law in effecting the merger;

(b) The surviving entity complies with RCW 25.15.405 and section 907 of this act;

(c) Each domestic limited liability company complies with RCW 25.15.400;

(d) Each domestic limited partnership complies with RCW 25.10.810; and

(e) Each domestic corporation complies with RCW 23B.11.080.

(2) Upon the merger taking effect, a surviving foreign limited liability company, limited partnership, or corporation is deemed to appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting partners or shareholders of each domestic limited liability company, domestic limited partnership, or domestic corporation party to the merger.

NEW SECTION. Sec. 1324. Sections 101 through 1307 of this act constitute a new chapter in Title 25 RCW.

NEW SECTION. Sec. 1325. Section 1308 of this act takes effect January 1, 1999.

Passed the House February 10, 1998.

Passed the Senate March 5, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.

## CHAPTER 104

[House Bill 2387]

### BUSINESS CORPORATIONS—SHARES AND DISTRIBUTIONS

AN ACT Relating to shares and distributions under the Washington business corporation act; and amending RCW 23B.06.010, 23B.06.020, and 23B.06.240.

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

Sec. 1. RCW 23B.06.010 and 1989 c 165 s 44 are each amended to read as follows:

(1) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue.

(a) If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations, voting powers, and relative rights of that class must be described in the articles of incorporation.

(b) ~~((Any of the designations;))~~ Preferences, limitations, voting powers, or relative rights of or on any class or series of shares or the holders thereof may be made dependent upon facts ascertainable outside the articles of incorporation ~~((or of any amendment thereto, or outside the resolution or resolutions providing for the issuance of shares adopted by the board of directors pursuant to authority expressly vested in it by the corporation's articles of incorporation)),~~ if the manner in which such facts shall operate on the ~~((designations;))~~ preferences, limitations, voting powers, or relative rights of such class or series ~~((is clearly and expressly))~~ of shares or the holders thereof is set forth in the articles of incorporation ~~((or in the resolution or resolutions providing for the issue of such shares adopted by the board of directors))~~. "Facts ascertainable outside the articles of incorporation" includes, but is not limited to, the existence of any condition or the occurrence of any event, including, without limitation, a determination or action by any person or body, including the corporation, its board of directors, or an officer, employee, or agent of the corporation.

(c) All shares of a class must have preferences, limitations, voting powers, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by (b) of this subsection or RCW 23B.06.020.

(2) The articles of incorporation must authorize (a) one or more classes of shares that together have unlimited voting rights, and (b) one or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

(3) The articles of incorporation may authorize one or more classes of shares that:

(a) Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this title;

(b) Are redeemable or convertible as specified in the articles of incorporation (i) at the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event, (ii) for cash, indebtedness, securities, or other property, (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(c) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(d) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(4) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (3) of this section is not exhaustive.

**Sec. 2.** RCW 23B.06.020 and 1989 c 165 s 45 are each amended to read as follows:

(1) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, voting powers, and relative rights, within the limits set forth in RCW 23B.06.010(1)(b) and this section of (a) any class of shares before the issuance of any shares of that class, or (b) one or more series within a class, and designate the number of shares within that series, before the issuance of any shares of that series.

(2) Each series of a class must be given a distinguishing designation.

(3) All shares of a series must have preferences, limitations, voting powers, and relative rights identical with those of other shares of the same series (~~and~~), except to the extent otherwise (~~provided in the description of the series, with those~~) permitted by RCW 23B.06.010(1)(b). All shares of a series must have preferences, limitations, voting powers, and relative rights identical with those of shares of other series of the same class, except to the extent otherwise provided in the description of the series.

(4) Before issuing any shares of a class or series created under this section, the corporation must deliver to the secretary of state for filing articles of amendment, which are effective without shareholder action, that set forth:

(a) The name of the corporation;

(b) The text of the amendment determining the terms of the class or series of shares;

(c) The date it was adopted; and

(d) The statement that the amendment was duly adopted by the board of directors.

(5) Unless the articles of incorporation provide otherwise, the board of directors may, after the issuance of shares of a series whose number it is authorized to designate, amend the resolution establishing the series to decrease, but not below the number of shares of such series then outstanding, the number of authorized shares of that series, by filing articles of amendment, which are effective without shareholder action, in the manner provided in subsection (4) of this section.

**Sec. 3.** RCW 23B.06.240 and 1989 c 165 s 52 are each amended to read as follows:

(1) Unless the articles of incorporation provide otherwise, a corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the terms and conditions relating to their exercise, including the time or times, the conditions precedent, and the consideration for which ((the shares are to be issued)) and the holders by whom the rights, options, or warrants may be exercised.

(2) The terms of rights, options, or warrants, including the time or times, the conditions precedent, and the consideration for which and the holders by whom

the rights, options, or warrants may be exercised, as well as their duration (a) may preclude or limit the exercise, transfer, or receipt of such rights, options, or warrants or invalidate or void any rights, options, or warrants and (b) may be made dependent upon facts ascertainable outside the documents evidencing them or outside the resolution or resolutions adopted by the board of directors creating such rights, options, or warrants if the manner in which those facts operate on the rights, options, or warrants or the holders thereof is clearly set forth in the documents or the resolutions. "Facts ascertainable outside the documents evidencing them or outside the resolution or resolutions adopted by the board of directors creating such rights, options, or warrants" includes, but is not limited to, the existence of any condition or the occurrence of any event, including, without limitation, a determination or action by any person or body, including the corporation, its board of directors, or an officer, employee, or agent of the corporation.

Passed the House February 9, 1998.

Passed the Senate March 5, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.

## CHAPTER 105

[Substitute House Bill 2394]

### DEPARTMENT OF GENERAL ADMINISTRATION— CONSOLIDATION OF OPERATING FUNDING STRUCTURE

AN ACT Relating to consolidating the operating funding structure of the department of general administration; amending RCW 4.92.220, 39.32.035, 39.32.040, 43.01.090, 43.19.1923, 43.19.1925, 43.19.1935, 43.19.500, 43.19.558, 43.19.605, 43.19.610, 43.19.615, 43.82.120, 43.82.125, and 43.88.350; adding a new section to chapter 43.19 RCW; repealing RCW 39.32.030, 39.32.050, and 43.19.1927; and providing an effective date.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 43.19 RCW to read as follows:

The general services administration account is created in the custody of the state treasurer and shall be used for all activities previously budgeted and accounted for in the following internal service funds: The motor transport account, the general administration management fund, the general administration facilities and services revolving fund, the central stores revolving fund, the surplus property purchase revolving fund, and the risk management account. Only the director or the director's designee may authorize expenditures from the account.

**Sec. 2.** RCW 4.92.220 and 1995 c 137 s 1 are each amended to read as follows:

(1) (~~(A risk management account is hereby created in the treasury)~~) The general administration services account is to be used (~~(exclusively)~~) for the payment of costs related to:

(a) The appropriated administration of liability, property, and vehicle claims, including investigation, claim processing, negotiation, and settlement, and other expenses relating to settlements and judgments against the state not otherwise budgeted; and

(b) The nonappropriated pass-through cost associated with the purchase of liability and property insurance, including catastrophic insurance, subject to policy conditions and limitations determined by the risk manager.

(2) The (~~(risk management)~~) general administration services account's appropriation for risk management shall be financed through a combination of direct appropriations and assessments to state agencies.

**Sec. 3.** RCW 39.32.035 and 1995 c 137 s 4 are each amended to read as follows:

The (~~(surplus property purchase revolving fund)~~) general administration services account shall be administered by the director of general administration and be used for the purchase, lease or other acquisition from time to time of surplus property from any federal, state, or local government surplus property disposal agency. The director may purchase, lease or acquire such surplus property on the requisition of an eligible donee and without such requisition at such time or times as he or she deems it advantageous to do so; and in either case he or she shall be responsible for the care and custody of the property purchased so long as it remains in his or her possession.

**Sec. 4.** RCW 39.32.040 and 1995 c 137 s 5 are each amended to read as follows:

In purchasing federal surplus property on requisition for any eligible donee the director may advance the purchase price thereof from the (~~(surplus property purchase revolving fund)~~) general administration services account, and he or she shall then in due course bill the proper eligible donee for the amount paid by him or her for the property plus a reasonable amount to cover the expense incurred by him or her in connection with the transaction. In purchasing surplus property without requisition, the director shall be deemed to take title outright and he or she shall then be authorized to resell from time to time any or all of such property to such eligible donees as desire to avail themselves of the privilege of purchasing. All moneys received in payment for surplus property from eligible donees shall be deposited by the director in the (~~(surplus property purchase revolving fund)~~) general administration services account. The director shall sell federal surplus property to eligible donees at a price sufficient only to reimburse the (~~(surplus property purchase revolving fund)~~) general administration services account for the cost of the property to the (~~(fund)~~) account, plus a reasonable amount to cover expenses incurred in connection with the transaction. Where surplus property is transferred to an eligible donee without cost to the transferee,

the director may impose a reasonable charge to cover expenses incurred in connection with the transaction. The governor, through the director of general administration, shall administer the surplus property program in the state and shall perform or supervise all those functions with respect to the program, its agencies and instrumentalities.

**Sec. 5.** RCW 43.01.090 and 1994 c 219 s 16 are each amended to read as follows:

The director of general administration may assess a charge or rent against each state board, commission, agency, office, department, activity, or other occupant or user for payment of a proportionate share of costs for occupancy of buildings, structures, or facilities including but not limited to all costs of acquiring, constructing, operating, and maintaining such buildings, structures, or facilities and the repair, remodeling, or furnishing thereof and for the rendering of any service or the furnishing or providing of any supplies, equipment, or materials.

The director of general administration may recover the full costs including appropriate overhead charges of the foregoing by periodic billings as determined by the director including but not limited to transfers upon accounts and advancements into the general administration ~~((facilities and))~~ services ~~((revolving fund))~~ account. Charges related to the rendering of real estate services under RCW 43.82.010 and to the operation of nonassigned public spaces in Thurston county shall be allocated separately from other charges assessed under this section. Rates shall be established by the director of general administration after consultation with the director of financial management. The director of general administration may allot, provide, or furnish any of such facilities, structures, services, equipment, supplies, or materials to any other public service type occupant or user at such rates or charges as are equitable and reasonably reflect the actual costs of the services provided: PROVIDED, HOWEVER, That the legislature, its duly constituted committees, interim committees and other committees shall be exempted from the provisions of this section.

Upon receipt of such bill, each entity, occupant, or user shall cause a warrant or check in the amount thereof to be drawn in favor of the department of general administration which shall be deposited in the state treasury to the credit of the general administration ~~((facilities and))~~ services ~~((revolving fund established in RCW 43.19.500))~~ account unless the director of financial management has authorized another method for payment of costs.

Beginning July 1, 1995, the director of general administration shall assess a capital projects surcharge upon each agency or other user occupying a facility owned and managed by the department of general administration in Thurston county. The capital projects surcharge does not apply to agencies or users that agree to pay all future repairs, improvements, and renovations to the buildings they occupy and a proportional share, as determined by the office of financial management, of all other campus repairs, installations, improvements, and

renovations that provide a benefit to the buildings they occupy or that have an agreement with the department of general administration that contains a charge for a similar purpose, including but not limited to RCW 43.01.091, in an amount greater than the capital projects surcharge. The director, after consultation with the director of financial management, shall adopt differential capital project surcharge rates to reflect the differences in facility type and quality. The initial payment structure for this surcharge shall be one dollar per square foot per year. The surcharge shall increase over time to an amount that when combined with the facilities and service charge equals the market rate for similar types of lease space in the area or equals five dollars per square foot per year, whichever is less. The capital projects surcharge shall be in addition to other charges assessed under this section. Proceeds from the capital projects surcharge shall be deposited into the Thurston county capital facilities account created in RCW 43.19.501.

Sec. 6. RCW 43.19.1923 and 1991 sp.s. c 16 s 921 are each amended to read as follows:

~~((There is created within the department of general administration a revolving fund to be known as the central stores revolving fund, which))~~ The general administration services account shall be used for the purchase of supplies and equipment handled or rented through central stores, and the payment of salaries, wages, and other costs incidental to the acquisition, operation, and maintenance of the central stores, and other activities connected therewith, which shall include utilities services. Disbursements from the ~~((fund))~~ account for the purchasing and contract administration activities of the division of purchasing within the department are subject to appropriation and allotment procedures under chapter 43.88 RCW. Disbursements for all other state purchasing activities within the ~~((central stores))~~ general administration services account are not subject to appropriation. The ~~((fund))~~ account shall be credited with all receipts from the rental, sale or distribution of supplies, equipment, and services rendered to the various state agencies. Central stores, utilities services, and other activities within the ~~((central stores revolving fund))~~ general administration services account shall be treated as separate operating entities for financial and accounting control. Financial records involving the ~~((central stores revolving fund))~~ general administration services account shall be designed to provide data for achieving maximum effectiveness and economy of each individual activity within the ~~((fund))~~ account.

Sec. 7. RCW 43.19.1925 and 1975 c 40 s 8 are each amended to read as follows:

To supply such funds as may be necessary for making combined purchases of items or services of common use by central stores, state agencies shall, upon request of the division of purchasing, from time to time, make advance payments into the ~~((central stores revolving fund))~~ general administration services account from funds regularly appropriated to them for the procurement of supplies, equipment, and services: PROVIDED, That advance payment for services shall



be on a quarterly basis: PROVIDED FURTHER, That any person, firm or corporation other than central stores rendering services for which advance payments are made shall deposit cash or furnish surety bond coverage to the state in an amount as shall be fixed by law, or if not fixed by law, then in such amounts as shall be fixed by the director of the department of general administration. Any such bond so furnished shall be conditioned that the person, firm or corporation receiving the advance payment will apply it toward performance of the contract. Funds so advanced to central stores shall be used only for the combined procurement, storage, and delivery of such stocks of supplies, equipment, and services as are requisitioned by the agency and shall be offset and repaid to the respective state agencies by an equivalent value in merchandise supplied and charged out from time to time from central stores. Costs of operation of central stores may be recovered by charging as part of the value of materials, supplies, or services an amount sufficient to cover the costs of operating central stores.

**Sec. 8.** RCW 43.19.1935 and 1985 c 188 s 1 are each amended to read as follows:

As a means of providing for the procurement of insurance and bonds on a volume rate basis, the director of general administration through the risk management office shall purchase or contract for the needs of state agencies in relation to all such insurance and bonds: PROVIDED, That authority to purchase insurance may be delegated to state agencies. Insurance in force shall be reported to the risk management office periodically under rules established by the director. Nothing contained in this section shall prohibit the use of licensed agents or brokers for the procurement and service of insurance.

The amounts of insurance or bond coverage shall be as fixed by law, or if not fixed by law, such amounts shall be as fixed by the director of the department of general administration.

The premium cost for insurance acquired and bonds furnished shall be paid from appropriations or other appropriate resources available to the state agency or agencies for which procurement is made, and all vouchers drawn in payment therefor shall bear the written approval of the risk management office prior to the issuance of the warrant in payment therefor. Where deemed advisable the premium cost for insurance and bonds may be paid by the ~~((central stores revolving fund))~~ general administration services account which ~~((fund))~~ shall be reimbursed by the agency or agencies for which procurement is made.

**Sec. 9.** RCW 43.19.500 and 1994 c 219 s 17 are each amended to read as follows:

~~((There is hereby created a fund within the state treasury designated as the "department of general administration facilities and services revolving fund". Such revolving fund))~~ The general administration services account shall be used by the department of general administration for the payment of certain costs, expenses, and charges, as specified in this section, incurred by it in the operation and administration of the department in the rendering of services, the furnishing

or supplying of equipment, supplies and materials, and for providing or allocating facilities, including the operation, maintenance, rehabilitation, or furnishings thereof to other agencies, offices, departments, activities, and other entities enumerated in RCW 43.01.090 and including the rendering of services in acquiring real estate under RCW 43.82.010 and the operation and maintenance of nonassigned public spaces in Thurston county. The department shall treat the rendering of services in acquiring real estate and the operation and maintenance of nonassigned public spaces as separate operating entities within the ((fund)) account for financial accounting and control.

The schedule of services, facilities, equipment, supplies, materials, maintenance, rehabilitation, furnishings, operations, and administration to be so financed and recovered shall be determined jointly by the director of general administration and the director of financial management, in equitable amounts which, together with any other income or appropriation, will provide the department of general administration with funds to meet its anticipated expenditures during any allotment period.

The director of general administration may adopt rules governing the provisions of RCW 43.01.090 and this section and the relationships and procedures between the department of general administration and such other entities.

**Sec. 10.** RCW 43.19.558 and 1994 sp.s. c 9 s 802 are each amended to read as follows:

The ((motor-transport)) general administration services account shall be used to pay the costs of carrying out the programs provided for in RCW 43.19.550 through 43.19.558, unless otherwise specified by law. The director of general administration may recover the costs of the programs by billing agencies that own and operate passenger motor vehicles on the basis of a per vehicle charge. The director of general administration, after consultation with affected state agencies, shall establish the rates. All rates shall be approved by the director of financial management. The proceeds generated by these charges shall be used solely to carry out RCW 43.19.550 through 43.19.558.

**Sec. 11.** RCW 43.19.605 and 1989 c 57 s 6 are each amended to read as follows:

No cash reimbursement shall be made to agencies for property transferred under RCW 43.19.600 to the extent that such property was originally acquired without cost or was purchased from general fund appropriations. The value of such property shall be entered upon the accounts of the ((motor-transport)) general administration services account as an amount due the agency from which the vehicle was transferred. For such property purchased from dedicated, revolving, or trust funds, the value at the time of transfer shall also be entered upon the accounts of the ((motor-transport)) general administration services account as an amount due the agency and fund from which the vehicle transferred was purchased and maintained. If surplus funds associated with motor vehicle

transportation services are available in the ((motor-transport)) general administration services account, the agency may be paid all or part of the amount due to the dedicated, revolving, or trust fund concerned. Otherwise, the credit for the amount due shall be applied proportionately over the remaining undepreciated life of such property. The prorated credits shall be applied monthly by the director of general administration against any monthly or other charges for motor vehicle transportation services rendered the agency.

To the extent surplus funds associated with motor vehicle transportation services are available in the ((motor-transport)) general administration services account, the director of general administration may direct a cash reimbursement to a dedicated, revolving, or trust fund where an amount due such a fund will not be charged off to services rendered by the department of general administration within a reasonable time.

Any disagreement between the supervisor of motor transport and an agency as to the amount of reimbursement to which it may be entitled shall be resolved by the director of general administration.

Sec. 12. RCW 43.19.610 and 1991 sp.s. c 13 s 35 are each amended to read as follows:

~~(There is hereby established in the state treasury an account to be known as the motor-transport account into which shall be paid)~~ All moneys, funds, proceeds, and receipts as provided in RCW 43.19.615 and as may otherwise be provided by law shall be paid into the general administration services account. Disbursements therefrom shall be made in accordance with the provisions of RCW 43.19.560 through 43.19.630, 43.41.130 and 43.41.140 as authorized by the director or a duly authorized representative and as may be provided by law.

Sec. 13. RCW 43.19.615 and 1975 1st ex.s. c 167 s 13 are each amended to read as follows:

The director of general administration shall deposit in the ((motor-transport)) general administration services account all receipts, including the initial transfer of automobile pool capital from the highway equipment fund and any other funds transferred, rentals or other fees and charges for transportation services furnished, proceeds from the sale of surplus or replaced property under the control of the supervisor of motor transport and other income, and from which shall be paid operating costs, including salaries and wages, administrative expense, overhead, the cost of replacement vehicles, additional passenger vehicles authorized pursuant to RCW 43.19.565, and any other expenses. If it is necessary at any time for the department to request any appropriation from the general fund or various dedicated, revolving, or trust funds to purchase additional vehicles, any appropriation therefor may provide that such advance shall be repaid together with reasonable interest from surpluses of the ((motor-transport)) general administration services account.

Sec. 14. RCW 43.82.120 and 1994 c 219 s 14 are each amended to read as follows:

All rental income collected by the department of general administration from rental of state buildings shall be deposited in the general administration ~~((management fund, the creation of which is hereby authorized))~~ services account.

**Sec. 15.** RCW 43.82.125 and 1965 c 8 s 43.82.125 are each amended to read as follows:

The general administration ~~((management fund))~~ services account shall be used to pay all costs incurred by the department in the operation of real estate managed under the terms of this chapter. Moneys received into the general administration ~~((management fund))~~ services account shall be used to pay rent to the owner of the space for occupancy of which the charges have been made and to pay utility and operational costs of the space utilized by the occupying agency: PROVIDED, That moneys received into the ~~((fund))~~ account for occupancy of space owned by the state where utilities and other operational costs are covered by appropriation to the department of general administration shall be immediately transmitted to the general fund~~((: PROVIDED FURTHER, That the director may expend not to exceed fifty thousand dollars per biennium from the general administration management fund to cover unusual or unexpected expenses connected with space occupancy or management that cannot be charged directly to any specific state agency. In the event the director determines that there is a surplus in this fund, he shall transfer such surplus to the general fund))~~.

**Sec. 16.** RCW 43.88.350 and 1981 c 270 s 14 are each amended to read as follows:

Any rate increases proposed for or any change in the method of calculating charges from the legal services revolving fund or services provided in accordance with RCW 43.01.090 or 43.19.500 in the general administration ~~((facilities and))~~ services ~~((revolving fund, or any change in the method of calculating charges from those funds,))~~ account is subject to approval by the director of financial management prior to implementation.

**NEW SECTION.** **Sec. 17.** The following acts or parts of acts are each repealed:

- (1) RCW 39.32.030 and 1967 ex.s. c 70 s 3 & 1945 c 205 s 3;
- (2) RCW 39.32.050 and 1945 c 205 s 6; and
- (3) RCW 43.19.1927 and 1965 c 8 s 43.19.1927.

**NEW SECTION.** **Sec. 18.** This act takes effect July 1, 1999.

Passed the House February 10, 1998.

Passed the Senate March 6, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.

## CHAPTER 106

[Substitute House Bill 2411]

## COUNTY TREASURERS—POWERS AND DUTIES

AN ACT Relating to functions of county treasurers; amending RCW 35.13.270, 35A.14.801, 36.29.010, 36.29.160, 57.16.110, 36.48.010, 39.46.110, 39.50.010, 57.08.081, 82.45.180, 84.04.060, 84.64.220, 84.64.300, 84.64.330, 84.64.340, 84.64.350, 84.64.380, 84.64.420, 84.64.430, 84.64.440, and 36.35.070; adding a new section to chapter 82.46 RCW; adding new sections to chapter 36.35 RCW; recodifying RCW 84.64.220, 84.64.230, 84.64.270, 84.64.300, 84.64.310, 84.64.320, 84.64.330, 84.64.340, 84.64.350, 84.64.360, 84.64.370, 84.64.380, 84.64.390, 84.64.400, 84.64.410, 84.64.420, 84.64.430, 84.64.440, 84.64.450, and 84.64.460; and repealing RCW 36.35.030, 36.35.040, 36.35.050, and 36.35.060.

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

**Sec. 1.** RCW 35.13.270 and 1965 c 7 s 35.13.270 are each amended to read as follows:

Whenever any territory is annexed to a city or town which is part of a road district of the county and road district taxes have been levied but not collected on any property within the annexed territory, the same shall when collected by the county treasurer be paid to the city or town and by the city or town placed in the city or town street fund; **PROVIDED, That this section shall not apply to any special assessments due in behalf of such property. The city or town is required to provide notification, by certified mail, that includes a list of annexed parcel numbers, to the county treasurer and assessor at least thirty days before the effective date of the annexation. The county treasurer is only required to remit to the city or town those road taxes collected thirty days or more after receipt of the notification.**

**Sec. 2.** RCW 35A.14.801 and 1971 ex.s. c 251 s 14 are each amended to read as follows:

Whenever any territory is annexed to a code city which is part of a road district of the county and road district taxes have been levied but not collected on any property within the annexed territory, the same shall when collected by the county treasurer be paid to the code city and by the city placed in the city street fund: **PROVIDED, That this section shall not apply to any special assessments due in behalf of such property. The code city is required to provide notification, by certified mail, that includes a list of annexed parcel numbers, to the county treasurer and assessor at least thirty days before the effective date of the annexation. The county treasurer is only required to remit to the code city those road taxes collected thirty or more days after receipt of the notification.**

**Sec. 3.** RCW 36.29.010 and 1995 c 38 s 4 are each amended to read as follows:

The county treasurer:

(1) Shall receive all money due the county and disburse it on warrants issued and attested by the county auditor and electronic funds transfer under RCW 39.58.750 as attested by the county auditor;

(2) Shall issue a receipt in duplicate for all money received other than taxes; the treasurer shall deliver immediately to the person making the payment the original receipt and the duplicate shall be retained by the treasurer;

(3) Shall affix on the face of all paid warrants the date of redemption or, in the case of proper contract between the treasurer and a qualified public depository, the treasurer may consider the date affixed by the financial institution as the date of redemption;

(4) Shall indorse, before the date of issue by the county or by any taxing district for whom the county treasurer acts as treasurer, on the face of all warrants for which there are not sufficient funds for payment, "interest bearing warrant." When there are funds to redeem outstanding warrants, the county treasurer shall give notice:

(a) By publication in a legal newspaper published or circulated in the county; or

(b) By posting at three public places in the county if there is no such newspaper; or

(c) By notification to the financial institution holding the warrant;

(5) Shall pay interest on all interest-bearing warrants from the date of issue to the date of notification;

(6) Shall maintain financial records reflecting receipts and disbursement by fund in accordance with generally accepted accounting principles;

(7) Shall account for and pay all bonded indebtedness for the county and all special districts for which the county treasurer acts as treasurer;

(8) Shall invest all funds of the county or any special district in the treasurer's custody, not needed for immediate expenditure, in a manner consistent with appropriate statutes. If cash is needed to redeem warrants issued from any fund in the custody of the treasurer, the treasurer shall liquidate investments in an amount sufficient to cover such warrant redemptions; and

(9) May provide certain collection services for county departments.

The treasurer, at the expiration of the term of office, shall make a complete settlement with the county legislative authority, and shall deliver to the successor all public money, books, and papers in the treasurer's possession.

**Sec. 4.** RCW 36.29.160 and 1996 c 230 s 1607 are each amended to read as follows:

The county treasurer shall make segregation, collect, and receive from any owner or owners of any subdivision or portion of any lot, tract or parcel of land upon which assessments or charges have been made or may be made (~~hereafter in~~) by public utility districts, water-sewer districts, or the county (~~road improvement districts~~), under the terms of Title 54 RCW, Title 57 RCW, or chapter 36.88, ~~36.89,~~ or 36.94 RCW, such portion of the assessments or charges levied or to be levied against such lot, tract or parcel of land in payment of such assessment or charges as the board of commissioners of the public utility district, the water-sewer district commissioners or the board of county commissioners, respectively, shall certify to be chargeable to such subdivision, which certificate shall state that such property as segregated is sufficient security for the assessment or charges. Upon making collection upon any such subdivision the county treasurer shall note such payment upon his records and give receipt therefor. When a segregation is required, a certified copy of the resolution shall be delivered to the treasurer of the county in which the real property is located who

shall proceed to make the segregation ordered upon being tendered a fee of three dollars for each tract of land for which a segregation is to be made.

**Sec. 5.** RCW 57.16.110 and 1996 c 230 s 610 are each amended to read as follows:

Whenever any land against which there has been levied any special assessment by any district shall have been sold in part or subdivided, the board of commissioners of the district shall have the power to order a segregation of the assessment.

Any person desiring to have a special assessment against a tract of land segregated to apply to smaller parts thereof shall apply to the board of commissioners of the district that levied the assessment. If the commissioners determine that a segregation should be made, they shall by resolution order the treasurer of the county in which the real property is located to make segregation on the original assessment roll as directed in the resolution. The segregation shall be made as nearly as possible on the same basis as the original assessment was levied, and the total of the segregated parts of the assessment shall equal the assessment before segregation. The resolution shall describe the original tract and the amount and date of the original assessment, and shall define the boundaries of the divided parts and the amount of the assessment chargeable to each part. A certified copy of the resolution shall be delivered to the treasurer of the county in which the real property is located who shall proceed to make the segregation (~~ordered upon being tendered a fee of three dollars for each tract of land for which a segregation is to be made. In addition to the charge~~), The board of commissioners may require as a condition to the order of segregation that the person seeking it pay the district the reasonable engineering and clerical costs incident to making the segregation.

**Sec. 6.** RCW 36.48.010 and 1984 c 177 s 8 are each amended to read as follows:

Each county treasurer shall annually at the end of each fiscal year or at such other times as may be deemed necessary, designate one or more financial institutions in the state which are qualified public depositories as set forth by the public deposit protection commission as depository or depositories for all public funds held and required to be kept by ~~((him as such))~~ the treasurer, and no county treasurer shall deposit any public money in financial institutions, except as herein provided. Public funds of the county or a special district for which the county treasurer acts as its treasurer may only be deposited in bank accounts authorized by the treasurer or authorized in statute. All bank card depository service contracts for the county and special districts for which the county treasurer acts as its treasurer must be authorized by the county treasurer.

**Sec. 7.** RCW 39.46.110 and 1995 c 38 s 8 are each amended to read as follows:

(1) General obligation bonds of local governments shall be subject to this section. Unless otherwise stated in law, the maximum term of any general obligation bond issue shall be forty years.

(2) General obligation bonds constitute an indebtedness of the local government issuing the bonds that are subject to the indebtedness limitations provided in Article VIII, section 6 of the state Constitution and are payable from tax revenues of the local government and such other money lawfully available and pledged or provided by the governing body of the local government for that purpose. Such governing body may pledge the full faith, credit and resources of the local government for the payment of general obligation bonds. The payment of such bonds shall be enforceable in mandamus against the local government and its officials. The officials now or hereafter charged by law with the duty of levying taxes pledged for the payment of general obligation bonds and interest thereon shall, in the manner provided by law, make an annual levy of such taxes sufficient together with other moneys lawfully available and pledge therefor to meet the payments of principal and interest on ~~((said))~~ the bonds as they come due.

(3) General obligation bonds, whether or not issued as physical instruments, shall be executed in the manner determined by the governing body or legislative body of the issuer. If the issuer is the county or a special district for which the county treasurer is the treasurer, the issuer shall notify the county treasurer at least thirty days in advance of authorizing the issuance of bonds or the incurrence of other certificates of indebtedness.

(4) Unless another statute specifically provides otherwise, the owner of a general obligation bond, or the owner of an interest coupon, issued by a local government shall not have any claim against the state arising from the general obligation bond or interest coupon.

(5) As used in this section, the term "local government" means every unit of local government, including municipal corporations, quasi municipal corporations, and political subdivisions, where property ownership is not a prerequisite to vote in the local government's elections.

**Sec. 8.** RCW 39.50.010 and 1985 c 332 s 8 are each amended to read as follows:

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

(1) "Governing body" means the legislative authority of a municipal corporation by whatever name designated;

(2) "Local improvement district" includes local improvement districts, utility local improvement districts, road improvement districts, and other improvement districts that a municipal corporation is authorized by law to establish;

(3) "Municipal corporation" means any city, town, county, water district, sewer district, school district, port district, public utility district, metropolitan municipal corporation, public transportation benefit area, park and recreation district, irrigation district, ~~((or))~~ fire protection district or any other municipal or



quasi municipal corporation described as such by statute, or regional transit authority, except joint operating agencies under chapter 43.52 RCW;

(4) "Ordinance" means an ordinance of a city or town or resolution or other instrument by which the governing body of the municipal corporation exercising any power under this chapter takes formal action and adopts legislative provisions and matters of some permanency; and

(5) "Short-term obligations" are warrants, notes, or other evidences of indebtedness, except bonds.

**Sec. 9.** RCW 57.08.081 and 1997 c 447 s 19 are each amended to read as follows:

The commissioners of any district shall provide for revenues by fixing rates and charges for furnishing sewer and drainage service and facilities to those to whom service is available or for providing water, such rates and charges to be fixed as deemed necessary by the commissioners, so that uniform charges will be made for the same class of customer or service and facility. Rates and charges may be combined for the furnishing of more than one type of sewer or drainage service and ~~((facility such as but not limited to storm or surface water and sanitary))~~ facilities.

In classifying customers of such water, sewer, or drainage system, the board of commissioners may in its discretion consider any or all of the following factors: The difference in cost to various customers; the location of the various customers within and without the district; the difference in cost of maintenance, operation, repair, and replacement of the various parts of the system; the different character of the service furnished various customers; the quantity and quality of the service and facility furnished; the time of its use; the achievement of water conservation goals and the discouragement of wasteful practices; capital contributions made to the system including but not limited to assessments; and any other matters which present a reasonable difference as a ground for distinction. Rates shall be established as deemed proper by the commissioners and as fixed by resolution and shall produce revenues sufficient to take care of the costs of maintenance and operation, revenue bond and warrant interest and principal amortization requirements, and all other charges necessary for efficient and proper operation of the system.

The commissioners shall enforce collection of connection charges, and rates and charges for water supplied against property owners connecting with the system or receiving such water, and for sewer and drainage services charged against property to which and its owners to whom the service is available, such charges being deemed charges against the property served, by addition of penalties of not more than ten percent thereof in case of failure to pay the charges at times fixed by resolution. The commissioners may provide by resolution that where either connection charges or rates and charges for services supplied are delinquent for any specified period of time, the district shall certify the delinquencies to the ~~((treasurer))~~ auditor of the county in which the real property is located, and the charges and any penalties added thereto and interest thereon

at the rate of not more than the prime lending rate of the district's bank plus four percentage points per year shall be a lien against the property upon which the service was received, subject only to the lien for general taxes.

The district may, at any time after the connection charges or rates and charges for services supplied or available and penalties are delinquent for a period of sixty days, bring suit in foreclosure by civil action in the superior court of the county in which the real property is located. The court may allow, in addition to the costs and disbursements provided by statute, attorneys' fees, title search and report costs, and expenses as it adjudges reasonable. The action shall be in rem, and may be brought in the name of the district against an individual or against all of those who are delinquent in one action. The laws and rules of the court shall control as in other civil actions.

In addition to the right to foreclose provided in this section, the district may also cut off all or part of the service after charges for water or sewer service supplied or available are delinquent for a period of sixty days.

**NEW SECTION. Sec. 10.** A new section is added to chapter 82.46 RCW to read as follows:

A county, city, or town that imposes an excise tax under this chapter must provide the county treasurer with a copy of the ordinance or other action initially authorizing the tax or altering the rate of the tax that is imposed at least sixty days before change becomes effective.

**Sec. 11.** RCW 82.45.180 and 1993 sp.s. c 25 s 510 are each amended to read as follows:

(1) For taxes collected by the county under this chapter, the county treasurer shall collect a two-dollar fee on all transactions required by this chapter where the transaction does not require the payment of tax. A total of two dollars shall be collected in the form of a tax and fee, where the calculated tax payment is less than two dollars. The county treasurer shall place one percent of the proceeds of the tax imposed by this chapter and the treasurer's fee in the county current expense fund to defray costs of collection and shall pay over to the state treasurer and account to the department of revenue for the remainder of the proceeds at the same time the county treasurer remits funds to the state under RCW 84.56.280. The state treasurer shall deposit the proceeds in the general fund for the support of the common schools.

(2) For taxes collected by the department of revenue under this chapter, the department shall remit the tax to the state treasurer who shall deposit the proceeds of any state tax in the general fund for the support of the common schools. The state treasurer shall deposit the proceeds of any local taxes imposed under chapter 82.46 RCW in the local real estate excise tax account hereby created in the state treasury. Moneys in the local real estate excise tax account may be spent only for distribution to counties, cities, and towns imposing a tax under chapter 82.46 RCW. Except as provided in RCW 43.08.190, all earnings of investments of balances in the local real estate excise tax account shall be credited to the local

real estate excise tax account and distributed to the counties, cities, and towns monthly. Monthly the state treasurer shall make distribution from the local real estate excise tax account to the counties, cities, and towns the amount of tax collected on behalf of each taxing authority. The state treasurer shall make the distribution under this subsection without appropriation.

Sec. 12. RCW 84.04.060 and 1961 c 15 s 84.04.060 are each amended to read as follows:

"Money" or "moneys" shall be held to mean (~~gold and silver coin, gold and silver certificates, treasury notes, United States notes, and bank notes~~) coin or paper money issued by the United States government.

Sec. 13. RCW 84.64.220 and 1961 c 15 s 84.64.220 are each amended to read as follows:

All property deeded to the county under the provisions of this chapter shall be stricken from the tax rolls as county property and exempt from taxation and shall not be again assessed or taxed while the property of the county. The sale, management, and leasing of tax title property shall be handled as under chapter 36.35 RCW.

Sec. 14. RCW 84.64.300 and 1961 c 15 s 84.64.300 are each amended to read as follows:

The county treasurer shall upon payment to (~~him~~) the county treasurer of the purchase price for (~~said~~) the property and any interest due, make and execute under (~~his~~) the county treasurer's hand and seal, and issue to the purchaser, a deed in the following form for any lots or parcels of real property sold under the provisions of RCW 84.64.270 (as recodified by this act).

State of Washington }  
County of . . . . . } ss.

This indenture, made this . . . . day of . . . . , (~~19--~~) (year), between . . . . , as treasurer of . . . . county, state of Washington, the party of the first part, and . . . . , party of the second part.

WITNESSETH, That whereas, at a public sale of real property, held on the . . . . day of . . . . , (~~A.D., 19--~~) (year), pursuant to an order of the (~~board of county commissioners~~) county legislative authority of the county of . . . . , state of Washington, duly made and entered, and after having first given due notice of the time and place and terms of (~~said~~) the sale, and, whereas, in pursuance of (~~said~~) the order of the (~~said board of county commissioners~~) county legislative authority, and of the laws of the state of Washington, and for and in consideration of the sum of . . . . dollars, lawful money of the United States of America, to me in hand paid, the receipt whereof is hereby acknowledged, I have this day sold to . . . . the following described real property, and which (~~said~~) the real property is the property of . . . . county, and which is particularly described as follows, to wit: . . . . , the (~~said~~) . . . . being the

highest and best bidder at ((said)) the sale, and the ((said)) sum being the highest and best sum bid at ((said)) the sale;

NOW, THEREFORE, Know ye that I, . . . . ., county treasurer of ((said)) the county of . . . . ., state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases made and provided, do hereby grant and convey unto . . . . ., heirs and assigns, forever, the ((said)) real property hereinbefore described, as fully and completely as ((said)) the party of the first part can by virtue of the premises convey the same.

Given under my hand and seal of office this . . . day of . . . . ., ((A.D. 19 . . . )) (year).

.....  
County Treasurer,  
By .....  
Deputy:

PROVIDED, That when by order of the (~~board of county commissioners~~) county legislative authority any of the minerals or other resources enumerated in RCW 84.64.270 (as recodified by this act) are reserved, the deed or contract of purchase shall contain the following reservation:

The party of the first part hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its successors, and assigns, forever, all oils, gases, coals, ores, minerals, gravel, timber and fossils of every name, kind or description, and which may be in or upon ((said)) the lands above described; or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, gravel, timber and fossils; and it also hereby expressly saves reserves out of the grant hereby made, unto itself, its successors and assigns, forever, the right to enter by itself, its agents, attorneys and servants upon ((said)) the lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing and working mines thereon, and taking out and removing therefrom all such oils, gases, coal, ores, minerals, gravel, timber and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its successors and assigns, forever, the right by it or its agents, servants and attorneys at any and all times to erect, construct, maintain and use all such buildings, machinery, roads and railroads, sink such shafts, remove such oil, and to remain on ((said)) the lands or any part thereof, for the business of mining and to occupy as much of ((said)) the lands as may be necessary or convenient for the successful prosecution of such mining business, hereby expressly reserving to itself, its successors and assigns, as aforesaid, generally, all rights and powers in, to and over, ((said)) the land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and the rights hereby expressly reserved. No rights shall be exercised under the foregoing reservation, by the county, its successors or assigns, until provision has been made by the county, its successors or assigns, to pay to the owner of the land upon which the rights herein reserved to the county, its successors or assigns, are sought to be exercised, full payment for all damages

sustained by ~~((said))~~ the owner, by reason of entering upon ~~((said))~~ the land: PROVIDED, That if ~~((said))~~ the owner from any cause whatever refuses or neglects to settle ~~((said))~~ the damages, then the county, its successors or assigns, or any applicant for a lease or contract from the county for the purpose of prospecting for or mining valuable minerals, or operation contract, or lease, for mining coal, or lease for extracting petroleum or natural gas, shall have the right to institute such legal proceedings in the superior court of the county wherein the land is situated, as may be necessary to determine the damages which ~~((said))~~ the owner of ~~((said))~~ the land may suffer: PROVIDED, The county treasurer shall cross out of such reservation any of ~~((said))~~ the minerals or other resources which were not reserved by order of the ~~((said-board))~~ county legislative authority.

**Sec. 15.** RCW 84.64.330 and 1961 c 15 s 84.64.330 are each amended to read as follows:

In any and all instances in this state in which a treasurer's deed to real property has been or shall be issued to the county in proceedings to foreclose the lien of general taxes, and for any reason a defect in title exists or adverse claims against the same have not been legally determined, the county or its successors in interest or assigns shall have authority to institute an action in the superior court in ~~((said))~~ the county to correct such defects, and to determine such adverse claims and the priority thereof as provided in RCW 84.64.330 through 84.64.440 ~~((provided))~~ (as recodified by this act).

**Sec. 16.** RCW 84.64.340 and 1961 c 15 s 84.64.340 are each amended to read as follows:

The county or its successors in interest or assigns shall have authority to include in one action any and all tracts of land in which plaintiff or plaintiffs in such action, jointly or severally, has or claims to have an interest. Such action shall be one in rem as against every right and interest in and claim against any and every part of the real property involved, except so much thereof as may be at the time the summons and notice is filed with the clerk of the superior court in the actual, open and notorious possession of any person or corporation, and then except only as to the interest claimed by such person so in possession: PROVIDED, That the possession required under the provisions of RCW 84.64.330 through 84.64.440 (as recodified by this act) shall be construed to be that by personal occupancy only, and not merely by representation or in contemplation of law. No person, firm or corporation claiming an interest in or to such lands need be specifically named in the summons and notice, except as in RCW 84.64.330 through 84.64.440 ~~((provided))~~ (as recodified by this act), and no pleadings other than the summons and notice and the written statements of those claiming a right, title and interest in and to the property involved shall be required.

**Sec. 17.** RCW 84.64.350 and 1961 c 15 s 84.64.350 are each amended to read as follows:

Upon filing a copy of the summons and notice in the office of the county clerk, service thereof as against every interest in and claim against any and every part of the property described in such summons and notice, and every person, firm, or corporation, except one who is in the actual, open and notorious possession of any of ~~((said))~~ the properties, shall be had by publication in the official county newspaper for six consecutive weeks; and no affidavit for publication of such summons and notice shall be required. In case ~~((there are outstanding local improvement))~~ special assessments imposed by a city or town against any of the real property described in the summons and notice remain outstanding, a copy of the same shall be served on the treasurer of the city or town within which such real property is situated within five days after such summons and notice is filed.

The summons and notice in such action shall contain the title of the court; specify in general terms the years for which the taxes were levied and the amount of the taxes and the costs for which each tract of land was sold; give the legal description of each tract of land involved, and the tax record owner thereof during the years in which the taxes for which the property was sold were levied; state that the purpose of the action is to foreclose all adverse claims of every nature in and to the property described, and to have the title of existing liens and claims of every nature against ~~((said))~~ the described real property, except that of the county, forever barred.

~~((Said))~~ The summons and notice shall also summon all persons, firms and corporations claiming any right, title and interest in and to ~~((said))~~ the described real property to appear within sixty days after the date of the first publication, specifying the day and year, and state in writing what right, title and interest they have or claim to have in and to the property described, and file the same with the clerk of the court above named; and shall notify them that in case of their failure so to do, judgment will be rendered determining that the title to ~~((said))~~ the real property is in the county free from all existing adverse interests, rights or claims whatsoever: PROVIDED, That in case any of the lands involved is in the actual, open and notorious possession of anyone at the time the summons and notice is filed, as herein provided, a copy of the same modified as herein specified shall be served personally upon such person in the same manner as summons is served in civil actions generally. ~~((Said))~~ The summons shall be substantially in the form above outlined, except that in lieu of the statement relative to the date and day of publication it shall require the person served to appear within twenty days after the day of service, exclusive of the date of service, and that the day of service need not be specified therein, and except further (that the recitals regarding the amount of the taxes and costs and the years the same were levied, the legal description of the land and the tax record owner thereof may be omitted except as to the land occupied by the persons served.

Every summons and notice provided for in RCW 84.64.330 through 84.64.440 (as recodified by this act) shall be subscribed by the prosecuting attorney of the county, or by any successor or assign of the county or his attorney,

as the case may be, followed by ~~((his))~~ the post office address of the successor or assign.

**Sec. 18.** RCW 84.64.380 and 1961 c 15 s 84.64.380 are each amended to read as follows:

The right of action of the county, its successors or assigns, under RCW 84.64.330 through 84.64.440 (as recodified by this act) shall rest on the validity of the taxes involved, and the plaintiff shall be required to prove only the amount of the former judgment foreclosing the lien thereof, together with the costs of the foreclosure and sale of each tract of land for ~~((said))~~ the taxes, and all the presumptions in favor of the tax foreclosure sale and issuance of treasurer's deed existing by law shall obtain in ~~((said))~~ the action.

**Sec. 19.** RCW 84.64.420 and 1961 c 15 s 84.64.420 are each amended to read as follows:

Nothing in RCW 84.64.330 through 84.64.440 (as recodified by this act) contained shall be construed to deprive any city ~~((or))~~, town, or other unit of local government that imposed special assessments on the property by including the property in a local improvement or special assessment district of its right to reimbursement for special assessments out of any surplus over and above the taxes, interest and costs involved.

**Sec. 20.** RCW 84.64.430 and 1961 c 15 s 84.64.430 are each amended to read as follows:

That in all cases where any county of the state of Washington has perfected title to real estate owned by ~~((such))~~ the county, under the provisions of RCW 84.64.330 through 84.64.420 (as recodified by this act) and resells the same or part thereof, it shall give to the purchaser a warranty deed in substantially the following form:

STATE OF WASHINGTON }  
County of ..... } ss.

This indenture, made this . . . . day of . . . . ~~((19--))~~ .. (year) .., between . . . . as treasurer of . . . . county, state of Washington, the party of the first part, and . . . . , party of the second part.

WITNESSETH, THAT WHEREAS, at a public sale of real property, held on the . . . . day of . . . . ~~((A.D. 19--))~~ .. (year) .., pursuant to an order of the ~~((board of county commissioners))~~ county legislative authority of the county of . . . . , state of Washington, duly made and entered, and after having first given due notice of the time and place and terms of ~~((said))~~ the sale, and, whereas, in pursuance of ~~((said))~~ the order of the ~~((said board of county commissioners))~~ county legislative authority, and of the laws of the state of Washington, and for and in consideration of the sum of . . . . dollars, lawful money of the United States of America, to me in hand paid, the receipt whereof is hereby acknowledged, I have this day sold to . . . . the following described real

property, and which ((said)) the real property is the property of . . . . . county, and which is particularly described as follows, to wit:

. . . . ., the ((said)) . . . . . being the highest and best bidder at ((said)) the sale, and the ((said)) sum being the highest and best sum bid at ((said)) the sale:

NOW THEREFORE KNOW YE that I, . . . . . county treasurer of ((said)) the county of . . . . ., state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases made and provided, do hereby grant, convey and warrant on behalf of . . . . . county unto . . . . ., his or her heirs and assigns, forever, the ((said)) real property hereinbefore described.

Given under my hand and seal of office this . . . . . day of . . . . . ((A.D.)), ((19 --)) . . . (year) . . .

. . . . .  
County Treasurer.  
By . . . . .  
Deputy.

Sec. 21. RCW 84.64.440 and 1961 c 15 s 84.64.440 are each amended to read as follows:

No recovery for breach of warranty shall be had, against the county executing a deed under the provisions of RCW 84.64.430 (as recodified by this act), in excess of the purchase price of the land described in such deed, with interest at the legal rate.

Sec. 22. RCW 36.35.070 and 1972 ex.s. c 150 s 8 are each amended to read as follows:

The provisions of this chapter shall be deemed as alternatives to, and not be limited by, the provisions of RCW 39.33.010, 36.34.130, and 84.64.310 (as recodified by this act), nor shall the authority granted in this chapter be held to be subjected to or qualified by the terms of such statutory provisions.

NEW SECTION. Sec. 23. RCW 84.64.220 (as amended by this act), 84.64.230, 84.64.270, 84.64.300 (as amended by this act), 84.64.310, 84.64.320, 84.64.330 (as amended by this act), 84.64.340 (as amended by this act), 84.64.350 (as amended by this act), 84.64.360, 84.64.370, 84.64.380 (as amended by this act), 84.64.390, 84.64.400, 84.64.410, 84.64.420 (as amended by this act), 84.64.430 (as amended by this act), 84.64.440 (as amended by this act), 84.64.450, and 84.64.460 are each recodified as sections in chapter 36.35 RCW.

NEW SECTION. Sec. 24. The following acts or parts of acts are each repealed:

- (1) RCW 36.35.030 and 1972 ex.s. c 150 s 4;
- (2) RCW 36.35.040 and 1972 ex.s. c 150 s 5;
- (3) RCW 36.35.050 and 1972 ex.s. c 150 s 6; and
- (4) RCW 36.35.060 and 1972 ex.s. c 150 s 7.



Passed the House March 7, 1998.  
 Passed the Senate March 4, 1998.  
 Approved by the Governor March 23, 1998.  
 Filed in Office of Secretary of State March 23, 1998.

## CHAPTER 107

[Substitute House Bill 2431]

### SOUTHWEST WASHINGTON STATE FAIR— POWERS OF LEWIS COUNTY BOARD OF COMMISSIONERS

AN ACT Relating to the Southwest Washington Fair; and amending RCW 36.90.010, 36.90.030, and 36.90.050.

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

**Sec. 1.** RCW 36.90.010 and 1973 1st ex.s. c 97 s 1 are each amended to read as follows:

The property of the Southwest Washington Fair Association including the buildings and structures thereon, as constructed or as may be built or constructed from time to time, or any alterations or additions thereto, shall be under the jurisdiction ~~((and control of the board of county commissioners))~~ of Lewis county ~~((at all times))~~. That property will be under the management and control of the board of county commissioners of Lewis county or that board's designee.

**Sec. 2.** RCW 36.90.030 and 1973 1st ex.s. c 97 s 3 are each amended to read as follows:

The board of county commissioners in the county of Lewis as administrators of all property relating to the southwest Washington fair may elect to appoint either (1) a designee, whose operation and funds the board may control and oversee, to carry out the board's duties and obligations as set forth in RCW 36.90.020, or (2) a commission of citizens to advise and assist in carrying out such fair. The chairman of the board of county commissioners of Lewis county ~~((shall be))~~ may elect to serve as chairman of any such commission. Such commission may elect a president and secretary and define their duties and fix their compensation, and provide for the keeping of its records. The commission may also designate the treasurer of Lewis county as fair treasurer. The funds relating to fair activities shall be kept separate and apart from the funds of Lewis county, but shall be deposited in the regular depositories of Lewis county and all interest earned thereby shall be added to and become a part of the funds. Fair funds shall be audited as are other county funds.

**Sec. 3.** RCW 36.90.050 and 1973 1st ex.s. c 97 s 5 are each amended to read as follows:

The Lewis county board of county commissioners may acquire by gift, exchange, devise, lease, or purchase, real property for southwest Washington fair purposes and may construct and maintain temporary or permanent improvements suitable and necessary for the purpose of holding and maintaining the southwest Washington fair. Any such property deemed surplus by the board may be (1) sold

at private sale after notice in a local publication of general circulation, or (2) exchanged for other property after notice in a local publication of general circulation, under Lewis county property management regulations.

Passed the House February 13, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.

## CHAPTER 108

[House Bill 2436]

### CENTER FOR INTERNATIONAL TRADE IN FOREST PRACTICES, OFFICE OF PUBLIC DEFENSE—ELIMINATION AND DELAY OF REVIEW AND TERMINATION

AN ACT Relating to the review and termination of the center for international trade in forest products and the office of public defense under the Washington sunset act; amending RCW 43.131.389 and 43.131.390; and repealing RCW 43.131.333 and 43.131.334.

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

**NEW SECTION.** Sec. 1. The following acts or parts of acts are each repealed:

(1) RCW 43.131.333 and 1994 c 282 s 4, 1992 c 121 s 2, 1988 c 288 s 15, & 1985 c 122 s 8; and

(2) RCW 43.131.334 and 1994 c 282 s 5, 1992 c 121 s 3, 1988 c 288 s 16, & 1985 c 122 s 9.

Sec. 2. RCW 43.131.389 and 1996 c 221 s 7 are each amended to read as follows:

The office of public defense and its powers and duties shall be terminated on June 30, ~~((2000))~~ 2008, as provided in RCW 43.131.390.

Sec. 3. RCW 43.131.390 and 1996 c 221 s 8 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, ~~((2001))~~ 2009:

(1) RCW 2.70.005 and 1996 c 221 s 1;

(2) RCW 2.70.010 and 1996 c 221 s 2;

(3) RCW 2.70.020 and 1996 c 221 s 3;

(4) RCW 2.70.030 and 1996 c 221 s 4; and

(5) RCW 2.70.040 and 1996 c 221 s 5.

Passed the House February 13, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.

## CHAPTER 109

[Substitute House Bill 2529]

SMALL BUSINESS EXPORT FINANCE ASSISTANCE CENTER—  
BOARD MEMBERS—POWERS

AN ACT Relating to the small business export finance assistance center; and amending RCW 43.210.020, 43.210.030, and 43.210.040.

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

**Sec. 1.** RCW 43.210.020 and 1990 1st ex.s. c 17 s 66 are each amended to read as follows:

A nonprofit corporation, to be known as the small business export finance assistance center, and branches subject to its authority, may be formed under chapter 24.03 RCW for the following public purposes:

(1) To assist small and medium-sized businesses in both urban and rural areas in the financing of export transactions.

(2) To provide, singly or in conjunction with other organizations, information and assistance to these businesses about export opportunities and financing alternatives.

~~((3) To provide information to and assist those businesses interested in exporting products, including the opportunities available to them in organizing export trading companies under the United States export trading company act of 1982, for the purpose of increasing their comparative sales volume and ability to export their products to foreign markets.))~~

**Sec. 2.** RCW 43.210.030 and 1995 c 399 s 106 are each amended to read as follows:

The small business export finance assistance center and its branches shall be governed and managed by a board of ~~((nineteen))~~ seven directors appointed by the governor, with the advice of the board, and confirmed by the senate. The directors shall serve terms of ~~((six years except that two of the original directors shall serve for two years and two of the original directors shall serve for))~~ four years following the terms of service established by the initial appointments after the effective date of this section. Three appointees, including directors on the effective date of this section who are reappointed, must serve initial terms of two years and, if a director is reappointed that director may serve a consecutive four-year term. Four appointees, including directors on the effective date of this section who are reappointed, must serve initial terms of four years and, if a director is reappointed that director may serve a consecutive four-year term. After the initial appointments, directors may serve two consecutive terms. The directors may provide for the payment of their expenses. The directors shall include ~~((a))~~ the director of community, trade, and economic development or the director's designee; representatives of ~~((a not-for-profit corporation formed for the purpose of facilitating economic development, at least two representatives of state financial institutions engaged in the financing of export transactions, a representative of a port district, and a representative of organized labor. Of the~~

~~remaining board members, there shall be one representative of business from the area west of Puget Sound, one representative of business from the area east of Puget Sound and west of the Cascade range, one representative of business from the area east of the Cascade range and west of the Columbia river, one representative of business from the area east of the Columbia river, the director of the department of community, trade, and economic development, and the director of the department of agriculture. One of the directors shall be a representative of the public selected from the area in the state west of the Cascade mountain range and one director shall be a representative of the public selected from that area of the state east of the Cascade mountain range. One director shall be a representative of the public at large. The directors shall be broadly representative of geographic areas of the state, and the representatives of businesses shall represent at least four different industries in different sized businesses as follows: (a) One representative of a company employing fewer than one hundred persons; (b) one representative of a company employing between one hundred and five hundred persons; (c) one representative of a company employing more than five hundred persons; (d) one representative from an export management company; and (e) one representative from an agricultural or food processing company)) a large financial institution engaged in financing export transactions in the state of Washington; a small financial institution engaged in financing export transactions in the state of Washington; a large exporting company domiciled in the state of Washington; a small exporting company in the state of Washington; organized labor in a trade involved in international commerce; and a representative at large. To the extent possible, appointments to the board shall reflect geographical balance and the diversity of the state population. Any vacancies on the board due to the expiration of a term or for any other reason shall be filled by appointment by the governor for the unexpired term.~~

Sec. 3. RCW 43.210.040 and 1987 c 505 s 43 are each amended to read as follows:

(1) The small business export finance assistance center formed under RCW 43.210.020 and 43.210.030 shall have the powers granted under chapter 24.03 RCW. In exercising such powers, the center may:

(a) Solicit and accept grants, contributions, and any other financial assistance from the federal government, federal agencies, and any other sources to carry out its purposes;

~~(b) ((Make loans to Washington businesses with annual sales of twenty-five million dollars or less for the purpose of financing exports of goods or services by those businesses to buyers in foreign countries. Loans by the small business export finance assistance center under this chapter shall not compete with nor be a substitute for available loans by a bank or other financial institution and shall only be considered upon a financial institution's assurance that such loan is not available;~~

~~—(c) Provide loan guarantees on loans made by financial institutions to businesses with annual sales of one hundred million dollars or less for the purpose of financing exports of goods or services by those businesses to buyers in foreign countries;~~

~~—(d) Establish and regulate the terms and conditions of any such loans and loan guarantees and charges for interest and services connected therewith;~~

~~—(e)) Provide assistance to businesses with annual sales of two hundred million dollars or less in obtaining loans and guarantees of loans made by financial institutions for the purpose of financing export of goods or services from the state of Washington:~~

~~(c) Provide export ~~((financial))~~ finance and risk mitigation counseling to Washington exporters with annual sales of ~~((one))~~ two hundred million dollars or less, provided that such counseling is not practicably available from a Washington for-profit business. For such counseling, the center may charge ~~((such))~~ reasonable fees as it determines are necessary~~((:-))~~;~~

~~~~((f))~~ (d) Provide assistance in obtaining export credit insurance or alternate forms of foreign risk mitigation to facilitate the export of goods and services from the state of Washington:~~

~~(e) Be available as a teaching resource to both public and private sponsors of workshops and programs relating to the financing and risk mitigation aspects of exporting products and services from the state of Washington:~~

~~(f) Develop a comprehensive inventory of export-financing resources, both public and private, including information on resource applicability to specific countries and payment terms:~~

~~(g) Contract with the federal government and its agencies to become a program administrator for federally provided ~~((country-risk))~~ loan guarantee and export credit insurance programs ~~((and for the purposes of this chapter))~~; and~~

~~~~((g))~~ (h) Take whatever action may be necessary to accomplish the purposes set forth in this chapter.~~

(2) The center may not use any Washington state funds or funds which come from the public treasury of the state of Washington to make loans or to make any payment under a loan guarantee agreement. Under no circumstances may the center use any funds received under RCW 43.210.050 to make or assist in making any loan or to pay or assist in paying any amount under a loan guarantee agreement. Debts of the center shall be center debts only and may be satisfied only from the resources of the center. The state of Washington shall not in any way be liable for such debts.

(3) The small business export finance assistance center shall make every effort to seek nonstate funds for its continued operation.

(4) The small business export finance assistance center may receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the small business export finance assistance center and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

Passed the House March 7, 1998.  
Passed the Senate March 3, 1998.  
Approved by the Governor March 23, 1998.  
Filed in Office of Secretary of State March 23, 1998.

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**CHAPTER 110**

[House Bill 2553]

**MANDATORY MEASURED TELECOMMUNICATIONS SERVICE—TARIFF BAN EXTENSION**

AN ACT Relating to mandatory measured telecommunications service; and amending RCW 80.04.130.

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

**Sec. 1.** RCW 80.04.130 and 1997 c 368 s 14 are each amended to read as follows:

(1) Whenever any public service company shall file with the commission any schedule, classification, rule or regulation, the effect of which is to change any rate, charge, rental or toll theretofore charged, the commission shall have power, either upon its own motion or upon complaint, upon notice, to enter upon a hearing concerning such proposed change and the reasonableness and justness thereof, and pending such hearing and the decision thereon the commission may suspend the operation of such rate, charge, rental or toll for a period not exceeding ten months from the time the same would otherwise go into effect, and after a full hearing the commission may make such order in reference thereto as would be provided in a hearing initiated after the same had become effective. The commission shall not suspend a tariff that makes a decrease in a rate, charge, rental, or toll filed by a telecommunications company pending investigation of the fairness, justness, and reasonableness of the decrease when the filing does not contain any offsetting increase to another rate, charge, rental, or toll and the filing company agrees to not file for an increase to any rate, charge, rental, or toll to recover the revenue deficit that results from the decrease for a period of one year. The filing company shall file with any decrease sufficient information as the commission by rule may require to demonstrate the decreased rate, charge, rental, or toll is above the long run incremental cost of the service. A tariff decrease that results in a rate that is below long run incremental cost, or is contrary to commission rule or order, or the requirements of this chapter, shall be rejected for filing and returned to the company. The commission may prescribe a different rate to be effective on the prospective date stated in its final order after its investigation, if it concludes based on the record that the originally filed and effective rate is unjust, unfair, or unreasonable.

For the purposes of this section, tariffs for the following telecommunications services, that temporarily waive or reduce charges for existing or new subscribers for a period not to exceed sixty days in order to promote the use of the services shall be considered tariffs that decrease rates, charges, rentals, or tolls:

- (a) Custom calling service;

- (b) Second access lines; or
- (c) Other services the commission specifies by rule.

The commission may suspend any promotional tariff other than those listed in (a) through (c) of this subsection.

The commission may suspend the initial tariff filing of any water company removed from and later subject to commission jurisdiction because of the number of customers or the average annual gross revenue per customer provisions of RCW 80.04.010. The commission may allow temporary rates during the suspension period. These rates shall not exceed the rates charged when the company was last regulated. Upon a showing of good cause by the company, the commission may establish a different level of temporary rates.

(2) At any hearing involving any change in any schedule, classification, rule or regulation the effect of which is to increase any rate, charge, rental or toll theretofore charged, the burden of proof to show that such increase is just and reasonable shall be upon the public service company.

(3) The implementation of mandatory local measured telecommunications service is a major policy change in available telecommunications service. The commission shall not accept for filing a price list, nor shall it accept for filing or approve, prior to June 1, ~~((1998))~~ 2001, a tariff filed by a telecommunications company which imposes mandatory local measured service on any customer or class of customers, except that, upon finding that it is in the public interest, the commission may accept for filing a price list or it may accept for filing and approve a tariff that imposes mandatory measured service for a telecommunications company's extended area service or foreign exchange service. This subsection does not apply to land, air, or marine mobile service, or to pay telephone service, or to any service which has been traditionally offered on a measured service basis.

(4) The implementation of Washington telephone assistance program service is a major policy change in available telecommunications service. The implementation of Washington telephone assistance program service will aid in achieving the stated goal of universal telephone service.

(5) If a utility claims a sales or use tax exemption on the pollution control equipment for an electrical generation facility and abandons the generation facility before the pollution control equipment is fully depreciated, any tariff filing for a rate increase to recover abandonment costs for the pollution control equipment shall be considered unjust and unreasonable for the purposes of this section.

Passed the House February 11, 1998.

Passed the Senate March 5, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.

**CHAPTER 111**

[House Bill 2568]

**MOTOR VEHICLE MANAGEMENT—****POWERS OF DEPARTMENT OF GENERAL ADMINISTRATION**

AN ACT Relating to motor vehicle management; amending RCW 28B.10.029, 43.19.565, and 46.08.065; and repealing RCW 43.19.550, 43.19.552, 43.19.554, 43.19.558, and 43.19.582.

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

**NEW SECTION.** Sec. 1. The following acts or parts of acts are each repealed:

- (1) RCW 43.19.550 and 1989 c 57 s 1;
- (2) RCW 43.19.552 and 1989 c 57 s 2;
- (3) RCW 43.19.554 and 1994 sp.s. c 9 s 803, 1990 c 75 s 1, & 1989 c 57 s 3;
- (4) RCW 43.19.558 and 1994 sp.s. c 9 s 802 & 1989 c 57 s 5; and
- (5) RCW 43.19.582 and 1982 c 163 s 10.

Sec. 2. RCW 28B.10.029 and 1996 c 110 s 5 are each amended to read as follows:

(1) An institution of higher education may exercise independently those powers otherwise granted to the director of general administration in chapter 43.19 RCW in connection with the purchase and disposition of all material, supplies, services, and equipment needed for the support, maintenance, and use of the respective institution of higher education. Property disposition policies followed by institutions of higher education shall be consistent with policies followed by the department of general administration. Purchasing policies and procedures followed by institutions of higher education shall be in compliance with chapters 39.19, 39.29, and 43.03 RCW, and RCW 43.19.1901, 43.19.1906, 43.19.1911, 43.19.1917, 43.19.1937, 43.19.534, 43.19.685, 43.19.700 through 43.19.704, and ~~((43.19.550))~~ 43.19.560 through 43.19.637. The community and technical colleges shall comply with RCW 43.19.450. Except for the University of Washington, institutions of higher education shall comply with RCW 43.19.1935, 43.19.19363, and 43.19.19368. If an institution of higher education can satisfactorily demonstrate to the director of the office of financial management that the cost of compliance is greater than the value of benefits from any of the following statutes, then it shall be exempt from them: RCW 43.19.685; 43.19.534; and 43.19.637. Any institution of higher education that chooses to exercise independent purchasing authority for a commodity or group of commodities shall notify the director of general administration. Thereafter the director of general administration shall not be required to provide those services for that institution for the duration of the general administration contract term for that commodity or group of commodities.

(2) An institution of higher education may exercise independently those powers otherwise granted to the public printer in chapter 43.78 RCW in connection with the production or purchase of any printing and binding needed by the respective institution of higher education. Purchasing policies and



procedures followed by institutions of higher education shall be in compliance with chapter 39.19 RCW. Any institution of higher education that chooses to exercise independent printing production or purchasing authority shall notify the public printer. Thereafter the public printer shall not be required to provide those services for that institution.

(3) For the purposes of this section, an "institution of higher education" shall include the joint center for higher education created in chapter 28B.25 RCW when the joint center for higher education is contracting with another institution of higher education that is acting as the sole agent for purchasing and disposing of material, supplies, services, and equipment, and for procuring printing or binding services.

**Sec. 3.** RCW 43.19.565 and 1975 1st ex.s. c 167 s 3 are each amended to read as follows:

The department of general administration shall establish a motor vehicle transportation service which is hereby empowered to:

(1) Provide suitable motor vehicle transportation services to any state agency on either a temporary or permanent basis upon requisition from a state agency and upon such demonstration of need as the department may require;

(2) Provide motor pools for the use of state agencies located in the Olympia and Seattle areas and such additional motor pools at other locations in the state as may be necessary to provide economic, efficient, and effective motor vehicle transportation services to state agencies. Such additional motor pools may be under either the direct control of the department or under the supervision of another state agency by agreement with the department;

(3) Establish an equitable schedule of rental and mileage charges to agencies for motor vehicle transportation services furnished which shall be designed to provide funds to cover replacement of vehicles and to recover the actual total costs of motor pool operations including but not limited to vehicle operation expense, depreciation expense, overhead, and nonrecoverable collision or other damage to vehicles. Additions to capital such as the purchase of additional vehicles shall be budgeted and purchased from funds appropriated for such purposes under such procedures as may be provided by law; and

(4) Establish guidelines, procedures, and standards for fleet operations that other state agencies and institutions of higher education may adopt. The guidelines, procedures, and standards shall be consistent with and carry out the objectives of any general policies adopted by the office of financial management under RCW 43.41.130.

**Sec. 4.** RCW 46.08.065 and 1989 c 57 s 9 are each amended to read as follows:

(1) It is unlawful for any public officer having charge of any vehicle owned or controlled by any county, city, town, or public body in this state other than the state of Washington and used in public business to operate the same upon the public highways of this state unless and until there shall be displayed upon such

automobile or other motor vehicle in letters of contrasting color not less than one and one-quarter inches in height in a conspicuous place on the right and left sides thereof, the name of such county, city, town, or other public body, together with the name of the department or office upon the business of which the said vehicle is used. This section shall not apply to vehicles of a sheriff's office, local police department, or any vehicles used by local peace officers under public authority for special undercover or confidential investigative purposes. This subsection shall not apply to: (a) Any municipal transit vehicle operated for purposes of providing public mass transportation; (b) any vehicle governed by the requirements of subsection (4) of this section; nor to (c) any motor vehicle on loan to a school district for driver training purposes. It shall be lawful and constitute compliance with the provisions of this section, however, for the governing body of the appropriate county, city, town, or public body other than the state of Washington or its agencies to adopt and use a distinctive insignia which shall be not less than six inches in diameter across its smallest dimension and which shall be displayed conspicuously on the right and left sides of the vehicle. Such insignia shall be in a color or colors contrasting with the vehicle to which applied for maximum visibility. The name of the public body owning or operating the vehicle shall also be included as part of or displayed above such approved insignia in colors contrasting with the vehicle in letters not less than one and one-quarter inches in height. Immediately below the lettering identifying the public entity and agency operating the vehicle or below an approved insignia shall appear the words "for official use only" in letters at least one inch high in a color contrasting with the color of the vehicle. The appropriate governing body may provide by rule or ordinance for marking of passenger motor vehicles as prescribed in subsection (2) of this section or for exceptions to the marking requirements for local governmental agencies for the same purposes and under the same circumstances as permitted for state agencies under subsection (3) of this section.

(2) Except as provided by subsections (3) and (4) of this section, passenger motor vehicles (~~(as defined in RCW 43.19.552)~~) owned or controlled by the state of Washington, and purchased after July 1, 1989, must be plainly and conspicuously marked on the lower left-hand corner of the rear window with the name of the operating agency or institution or the words "state motor pool," as appropriate, the words "state of Washington — for official use only," and the seal of the state of Washington or the appropriate agency or institution insignia, approved by the department of general administration. Markings must be on a transparent adhesive material and conform to the standards established by the department of general administration (~~(under RCW 43.19.554(1))~~). For the purposes of this section, "passenger motor vehicles" means sedans, station wagons, vans, light trucks, or other motor vehicles under ten thousand pounds gross vehicle weight.

(3) Subsection (2) of this section shall not apply to vehicles used by the Washington state patrol for general undercover or confidential investigative purposes. Traffic control vehicles of the Washington state patrol may be

exempted from the requirements of subsection (2) of this section at the discretion of the chief of the Washington state patrol. The department of general administration shall adopt general rules permitting other exceptions to the requirements of subsection (2) of this section for other vehicles used for law enforcement, confidential public health work, and public assistance fraud or support investigative purposes, for vehicles leased or rented by the state on a casual basis for a period of less than ninety days, and those provided for in RCW 46.08.066(3). The exceptions in this subsection, subsection (4) of this section, and those provided for in RCW 46.08.066(3) shall be the only exceptions permitted to the requirements of subsection (2) of this section.

(4) Any motorcycle, vehicle over 10,000 pounds gross vehicle weight, or other vehicle that for structural reasons cannot be marked as required by subsection (1) or (2) of this section that is owned or controlled by the state of Washington or by any county, city, town, or other public body in this state and used for public purposes on the public highways of this state shall be conspicuously marked in letters of a contrasting color with the words "State of Washington" or the name of such county, city, town, or other public body, together with the name of the department or office that owns or controls the vehicle.

(5) All motor vehicle markings required under the terms of this chapter shall be maintained in a legible condition at all times.

Passed the House February 10, 1998.

Passed the Senate March 6, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.

## CHAPTER 112

[Engrossed Substitute House Bill 2596]

### MASTER PLANNED RESORTS—REVISIONS

AN ACT Relating to master planned resorts; amending RCW 36.70A.360; and creating a new section.

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

**NEW SECTION. Sec. I.** The primary intent of this act is to give effect to recommendations by the 1994 department of community, trade, and economic development's master planned resort task force by clarifying that master planned resorts may make use of capital facilities, utilities, and services provided by outside service providers, and may enter into agreements for shared facilities with such providers, when all costs directly attributable to the resort, including capacity increases, are fully borne by the resort.

**Sec. 2.** RCW 36.70A.360 and 1991 sp.s. c 32 s 17 are each amended to read as follows:

(1) Counties that are required or choose to plan under RCW 36.70A.040 may permit master planned resorts which may constitute urban growth outside of urban

growth areas as limited by this section. A master planned resort means a self-contained and fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities.

(2) Capital facilities, utilities, and services, including those related to sewer, water, storm water, security, fire suppression, and emergency medical, provided on-site shall be limited to meeting the needs of the master planned resort. Such facilities, utilities, and services may be provided to a master planned resort by outside service providers, including municipalities and special purpose districts, provided that all costs associated with service extensions and capacity increases directly attributable to the master planned resort are fully borne by the resort. A master planned resort and service providers may enter into agreements for shared capital facilities and utilities, provided that such facilities and utilities serve only the master planned resort or urban growth areas.

Nothing in this subsection may be construed as: Establishing an order of priority for processing applications for water right permits, for granting such permits, or for issuing certificates of water right; altering or authorizing in any manner the alteration of the place of use for a water right; or affecting or impairing in any manner whatsoever an existing water right.

All waters or the use of waters shall be regulated and controlled as provided in chapters 90.03 and 90.44 RCW and not otherwise.

(3) A master planned resort may include other residential uses within its boundaries, but only if the residential uses are integrated into and support the on-site recreational nature of the resort.

(4) A master planned resort may be authorized by a county only if:

~~((1))~~ (a) The comprehensive plan specifically identifies policies to guide the development of master planned resorts;

~~((2))~~ (b) The comprehensive plan and development regulations include restrictions that preclude new urban or suburban land uses in the vicinity of the master planned resort, except in areas otherwise designated for urban growth under RCW 36.70A.110;

~~((3))~~ (c) The county includes a finding as a part of the approval process that the land is better suited, and has more long-term importance, for the master planned resort than for the commercial harvesting of timber or agricultural production, if located on land that otherwise would be designated as forest land or agricultural land under RCW 36.70A.170;

~~((4))~~ (d) The county ensures that the resort plan is consistent with the development regulations established for critical areas; and

~~((5))~~ (e) On-site and off-site infrastructure and service impacts are fully considered and mitigated.

Passed the House March 9, 1998.  
Passed the Senate March 5, 1998.  
Approved by the Governor March 23, 1998.  
Filed in Office of Secretary of State March 23, 1998.

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## CHAPTER 113

[Substitute House Bill 2680]

### CONSUMER LEASING ACT—DEFINITION OF CAPITALIZED COST

AN ACT Relating to clarifying the definition of capitalized cost for purposes of the consumer leasing act; and amending RCW 63.10.020 and 63.10.040.

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

**Sec. 1.** RCW 63.10.020 and 1995 c 112 s 1 are each amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) The term "adjusted capitalized cost" means the agreed-upon amount that serves as the basis for determining the periodic lease payment, computed by subtracting from the gross capitalized cost any capitalized cost reduction.

(2) The term "gross capitalized cost" means the amount ascribed by the lessor to the vehicle including optional equipment, plus taxes, title, license fees, lease acquisition and administrative fees, insurance premiums, warranty charges, and any other product, service, or amount amortized in the lease. However, any definition of gross capitalized cost adopted by the federal reserve board to be used in the context of mandatory disclosure of the gross capitalized cost to lessees in consumer motor vehicle lease transactions supersedes the definition of gross capitalized cost in this subsection.

(3) The term "capitalized cost reduction" means any payment made by cash, check, or similar means, any manufacturer rebate, and net trade in allowance granted by the lessor at the inception of the lease for the purpose of reducing the gross capitalized cost but does not include any periodic lease payments due at the inception of the lease or all of the periodic lease payments if they are paid at the inception of the lease.

(4) The term "consumer lease" means a contract of lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding twenty-five thousand dollars, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, except that such term shall not include any lease which meets the definition of a retail installment contract under RCW 63.14.010 or the definition of a lease-purchase agreement under chapter 63.19 RCW. The twenty-five thousand dollar total contractual obligation in this subsection shall not apply to consumer leases of motor vehicles. The inclusion in a lease of a provision whereby the lessee's or lessor's liability, at the end of the lease period or upon an earlier termination, is based on the value of the leased property at that

time, shall not be deemed to make the transaction other than a consumer lease. The term "consumer lease" does not include a lease for agricultural, business, or commercial purposes, or to a government or governmental agency or instrumentality, or to an organization.

(5) The term "lessee" means a natural person who leases or is offered a consumer lease.

(6) The term "lessor" means a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a consumer lease.

Sec. 2. RCW 63.10.040 and 1995 c 112 s 2 are each amended to read as follows:

(1) In any lease contract subject to this chapter, the following items, as applicable, shall be disclosed:

(a) A brief description of the leased property, sufficient to identify the property to the lessee and lessor.

(b) The total amount of any payment, such as a refundable security deposit paid by cash, check, or similar means, advance payment, capitalized cost reduction, or any trade-in allowance, appropriately identified, to be paid by the lessee at consummation of the lease.

(c) The number, amount, and due dates or periods of payments scheduled under the lease and the total amount of the periodic payments.

(d) The total amount paid or payable by the lessee during the lease term for official fees, registration, certificate of title, license fees, or taxes.

(e) The total amount of all other charges, individually itemized, payable by the lessee to the lessor, which are not included in the periodic payments. This total includes the amount of any liabilities the lease imposes upon the lessee at the end of the term, but excludes the potential difference between the estimated and realized values required to be disclosed under (m) of this subsection.

(f) A brief identification of insurance in connection with the lease including (i) if provided or paid for by the lessor, the types and amounts of coverages and cost to the lessee, or (ii) if not provided or paid for by the lessor, the types and amounts of coverages required of the lessee.

(g) A statement identifying any express warranties or guarantees available to the lessee made by the lessor or manufacturer with respect to the leased property.

(h) An identification of the party responsible for maintaining or servicing the leased property together with a brief description of the responsibility, and a statement of reasonable standards for wear and use, if the lessor sets such standards.

(i) A description of any security interest, other than a security deposit disclosed under (b) of this subsection, held or to be retained by the lessor in connection with the lease and a clear identification of the property to which the security interest relates.

(j) The amount or method of determining the amount of any penalty or other charge for delinquency, default, or late payments.

(k) A statement of whether or not the lessee has the option to purchase the leased property and, if at the end of the lease term, at what price, and, if prior to the end of the lease term, at what time, and the price or method of determining the price.

(l) A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the lease term and the amount or method of determining the amount of any penalty or other charge for early termination.

(m) A statement that the lessee shall be liable for the difference between the estimated value of the property and its realized value at early termination or the end of the lease term, if such liability exists.

(n) Where the lessee's liability at early termination or at the end of the lease term is based on the estimated value of the leased property, a statement that the lessee may obtain at the end of the lease term or at early termination, at the lessee's expense, a professional appraisal of the value which could be realized at sale of the leased property by an independent third party agreed to by the lessee and the lessor, which appraisal shall be final and binding on the parties.

(o) Where the lessee's liability at the end of the lease term is based upon the estimated value of the leased property:

(i) The value of the property at consummation of the lease, the itemized total lease obligation at the end of the lease term, and the difference between them.

(ii) That there is a rebuttable presumption that the estimated value of the leased property at the end of the lease term is unreasonable and not in good faith to the extent that it exceeds the realized value by more than three times the average payment allocable to a monthly period, and that the lessor cannot collect the amount of such excess liability unless the lessor brings a successful action in court in which the lessor pays the lessee's attorney's fees, and that this provision regarding the presumption and attorney's fees does not apply to the extent the excess of estimated value over realized value is due to unreasonable wear or use, or excessive use.

(iii) A statement that the requirements of (o)(ii) of this subsection do not preclude the right of a willing lessee to make any mutually agreeable final adjustment regarding such excess liability.

(p) In consumer leases of motor vehicles:

(i) The gross capitalized cost stated as a total and the identity of the components listed in the definition of gross capitalized cost and the respective amount of each component;

(ii) Any capitalized cost reduction stated as a total (~~and the identity of the components and the respective amount of each component~~);

(iii) A statement of adjusted capitalized cost;

(iv) ~~(A disclosure, in proximity to the lessee's signature, in not less than ten point bold type to the lessee: "WARNING!- EARLY TERMINATION UNDER THIS LEASE MAY RESULT IN SIGNIFICANT COSTS TO YOU THE CONSUMER. READ THIS AGREEMENT CAREFULLY AND UNDER-~~

~~STAND ALL PROVISIONS BEFORE SIGNING. GET ALL PROMISES IN WRITING. ORAL PROMISES ARE DIFFICULT TO ENFORCE.”; and~~

—(v)) If the lessee trades in a motor vehicle, the amount of any sales tax exemption for the agreed value of the traded vehicle and any reduction in the periodic payments resulting from the application of the sales tax exemption shall be disclosed in the lease contract; and

(v) A statement of the total amount to be paid prior to or at consummation or by delivery, if delivery occurs after consummation. The lessor shall itemize each component by type and amount and shall itemize how the total amount will be paid, by type and amount.

(2) Where disclosures required under this chapter are the same as those required under Title I of the federal consumer protection act (90 Stat. 257, 15 U.S.C. Sec. 1667 et seq.), which is also known as the federal consumer leasing act, as of the date upon which the consumer lease is executed, disclosures complying with the federal consumer leasing act shall be deemed to comply with the disclosure requirements of this chapter.

Passed the House February 10, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.

## CHAPTER 114

[Second Substitute House Bill 2782]

### SPECIAL EVENT ENDORSEMENTS TO FULL SERVICE PRIVATE CLUB LICENSES

AN ACT Relating to special event endorsements to full service private club licenses; amending RCW 66.24.450; creating a new section; and providing an effective date.

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

**Sec. 1.** RCW 66.24.450 and 1997 c 321 s 30 are each amended to read as follows:

(1) No club shall be entitled to a full service private club license:

(a) Unless such private club has been in continuous operation for at least one year immediately prior to the date of its application for such license;

(b) Unless the private club premises be constructed and equipped, conducted, managed, and operated to the satisfaction of the board and in accordance with this title and the regulations made thereunder;

(c) Unless the board shall have determined pursuant to any regulations made by it with respect to private clubs, that such private club is a bona fide private club; it being the intent of this section that license shall not be granted to a club which is, or has been, primarily formed or activated to obtain a license to sell liquor, but solely to a bona fide private club, where the sale of liquor is incidental to the main purposes of the private club, as defined in RCW 66.04.010(7).

(2) The annual fee for a full service private club license, whether inside or outside of an incorporated city or town, is seven hundred twenty dollars per year.



(3) The board may issue an endorsement to the full service private club license that allows up to forty nonclub, member-sponsored events using club liquor. Visitors and guests may attend these events only by invitation of the sponsoring member or members. These events may not be open to the general public. The fee for the endorsement shall be an annual fee of nine hundred dollars. Upon the board's request, the holder of the endorsement must provide the board or the board's designee with the following information at least seventy-two hours prior to the event: The date, time, and location of the event; the name of the sponsor of the event; and a brief description of the purpose of the event.

***\*NEW SECTION. Sec. 2. The board shall report to the senate and house of representatives by January 1, 2001, on whether it has found in the ordinary course of its business since the effective date of this act that compliance by private clubs with restrictions on service of nonmembers has improved as a result of the changes in RCW 66.24.450 by section 1 of this act, and whether any amendments are needed to enhance compliance.***

\*Sec. 2 was vetoed. See message at end of chapter.

**NEW SECTION. Sec. 3.** This act takes effect July 1, 1998.

Passed the House March 7, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 23, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 23, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 2, Second Substitute House Bill No. 2782 entitled:

"AN ACT Relating to special event endorsements to full service private club licenses;"

Section 1 of Second Substitute House Bill No. 2782 will allow non-profit private clubs to pay for a license endorsement that allows them to serve alcohol at up to forty events per year where non-members are invited. Section 2 of the bill would require the Liquor Control Board to report to the legislature on whether the change in section 1 of 2SHB 2782 has improved compliance with the law, and whether more amendments are needed to enhance compliance.

Information on violations of liquor laws is maintained by the Liquor Control Board as part of its regular business operations, and that information is available to anyone. Therefore, the reporting requirement of section 2 is not necessary.

For this reason, I have vetoed section 2 of Second Substitute House Bill No. 2782.

With the exception of section 2, I am approving Second Substitute House Bill No. 2782."

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## CHAPTER 115

[Substitute House Bill 2917]

### FUEL TAX AND INTERNATIONAL REGISTRATION PLAN PAYMENTS

AN ACT Relating to fuel tax and international registration plan payments; amending RCW 46.87.080, 82.36.070, 82.36.310, and 82.38.120; adding a new section to chapter 82.38 RCW; adding a new section to chapter 82.32 RCW; and creating a new section.

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

**Sec. 1.** RCW 46.87.080 and 1993 c 307 s 14 are each amended to read as follows:

(1) Upon making satisfactory application and payment of applicable fees and taxes for proportional registration under this chapter, the department shall issue a cab card and validation tab for each vehicle, and to vehicles of Washington-based fleets, two distinctive apportionable license plates for each motor vehicle and one such plate for each trailer, semitrailer, pole trailer, or converter gear listed on the application. License plates shall be displayed on vehicles as required by RCW 46.16.240. The number and plate shall be of a design, size, and color determined by the department. The plates shall be treated with reflectorized material and clearly marked with the words "WASHINGTON" and "APPORTIONED," both words to appear in full and without abbreviation.

(2) The cab card serves as the certificate of registration for a proportionally registered vehicle. The face of the cab card shall contain the name and address of the registrant as contained in the records of the department, the license plate number assigned to the vehicle by the base jurisdiction, the vehicle identification number, and such other description of the vehicle and data as the department may require. The cab card shall be signed by the registrant, or a designated person if the registrant is a business firm, and shall at all times be carried in or on the vehicle to which it was issued. In the case of nonpowered vehicles, the cab card may be carried in or on the vehicle supplying the motive power instead of in or on the nonpowered vehicle.

(3) The apportioned license plates are not transferrable from vehicle to vehicle unless otherwise determined by rule and shall be used only on the vehicle to which they are assigned by the department for as long as they are legible or until such time as the department requires them to be removed and returned to the department.

(4) Distinctive validation tab(s) of a design, size, and color determined by the department shall be affixed to the apportioned license plate(s) as prescribed by the department to indicate the month, if necessary, and year for which the vehicle is registered. Foreign-based vehicles proportionally registered in this state under the provisions of the Western Compact shall display the validation tab on a backing plate or as otherwise prescribed by the department.

(5) Renewals shall be effected by the issuance and display of such tab(s) after making satisfactory application and payment of applicable fees and taxes.

(6) Fleet vehicles so registered and identified shall be deemed to be fully licensed and registered in this state for any type of movement or operation. However, in those instances in which a grant of authority is required for interstate or intrastate movement or operation, no such vehicle may be operated in interstate or intrastate commerce in this state unless the owner has been granted interstate operating authority by the interstate commerce commission in the case of interstate operations or intrastate operating authority by the Washington utility and transportation commission in the case of intrastate operations and unless the vehicle is being operated in conformity with that authority.

(7) The department may issue temporary authorization permits (TAPs) to qualifying operators for the operation of vehicles pending issuance of license identification. A fee of one dollar plus a one dollar filing fee shall be collected for each permit issued. The permit fee shall be deposited in the motor vehicle fund, and the filing fee shall be deposited in the highway safety fund. The department may adopt rules for use and issuance of the permits.

(8) The department may refuse to issue any license or permit authorized by subsection (1) or (7) of this section to any person: (a) Who formerly held any type of license or permit issued by the department pursuant to chapter 46.16, 46.85, 46.87, 82.36, ~~((82.37,))~~ or 82.38 RCW that has been revoked for cause, which cause has not been removed; or (b) who is a subterfuge for the real party in interest whose license or permit issued by the department pursuant to chapter 46.16, 46.85, 46.87, 82.36, ~~((82.37,))~~ or 82.38 RCW and has been revoked for cause, which cause has not been removed; or (c) who, as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, has had a license or permit issued by the department pursuant to chapter 46.16, 46.85, 46.87, 82.36, ~~((82.37,))~~ or 82.38 RCW which has been revoked for cause, which cause has not been removed; or (d) who has an unsatisfied debt to the state assessed under either chapter 46.16, 46.85, 46.87, 82.36, ~~((82.37,))~~ 82.38, or 82.44 RCW.

(9) The department may revoke the license or permit authorized by subsection (1) or (7) of this section issued to any person for any of the grounds constituting cause for denial of licenses or permits set forth in subsection (8) of this section.

(10) Before such refusal or revocation under subsection (8) or (9) of this section, the department shall grant the applicant a hearing and at least ten days written notice of the time and place of the hearing.

**Sec. 2.** RCW 82.36.070 and 1996 c 104 s 4 are each amended to read as follows:

The application in proper form having been accepted for filing, the filing fee paid, and the bond or other security having been accepted and approved, the department shall issue to the applicant a license to transact business as a distributor in the state, and such license shall be valid until canceled or revoked.

The license so issued by the department shall not be assignable, and shall be valid only for the distributor in whose name issued.

The department shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all licensed distributors.

Each distributor shall be assigned a license number upon qualifying for a license hereunder, and the department shall issue to each such licensee a license certificate which shall be displayed conspicuously by the distributor at his or her principal place of business. The department may refuse to issue or may revoke a motor vehicle fuel distributor license, to a person:

(1) Who formerly held a motor vehicle fuel distributor's license that, before the time of filing for application, has been revoked or canceled for cause;

(2) Who is a subterfuge for the real party in interest whose license has been revoked or canceled for cause;

(3) Who, as an individual licensee or officer, director, owner, or managing employee of a nonindividual licensee, has had a motor vehicle fuel distributor license revoked or canceled for cause;

(4) Who has an unsatisfied debt to the state assessed under either chapter 82.36, (~~82.37~~) 82.38, 82.42, or 46.87 RCW;

(5) Who formerly held as an individual, officer, director, owner, managing employee of a nonindividual licensee, or subterfuge for a real party in interest, a license issued by the federal government or a state that allowed a person to buy or sell untaxed motor vehicle or special fuel, which license, before the time of filing for application, has been revoked for cause;

(6) Who pled guilty to or was convicted as an individual, corporate officer, director, owner, or managing employee in this or any other state or in any federal jurisdiction of a gross misdemeanor or felony crime directly related to the business or has been subject to a civil judgment involving fraud, misrepresentation, conversion, or dishonesty, notwithstanding chapter 9.96A RCW;

(7) Who misrepresented or concealed a material fact in obtaining a license or in reinstatement thereof;

(8) Who violated a statute or administrative rule regulating fuel taxation or distribution;

(9) Who failed to cooperate with the department's investigations by:

(a) Not furnishing papers or documents;

(b) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or

(c) Not responding to subpoenas issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;

(10) Who failed to comply with an order issued by the director; or

(11) Upon other sufficient cause being shown.

Before such a refusal or revocation, the department shall grant the applicant a hearing and shall give the applicant at least twenty days' written notice of the time and place of the hearing.

For the purpose of considering an application for a distributor's license, the department may inspect, cause an inspection, investigate, or cause an investigation of the records of this or any other state or of the federal government to ascertain the veracity of the information on the application form and the applicant's criminal and licensing history.

The department may, in the exercise of reasonable discretion, suspend a motor vehicle distributor license at any time before and pending such a hearing for unpaid taxes or reasonable cause.

**Sec. 3.** RCW 82.36.310 and 1995 c 318 s 3 are each amended to read as follows:

Any person claiming a refund for motor vehicle fuel used or exported as in this chapter provided shall not be entitled to receive such refund until he presents

to the director a claim upon forms to be provided by the director with such information as the director shall require, which claim to be valid shall in all cases be accompanied by ~~((the original invoice or))~~ invoices issued to the claimant at the time of the purchases of the motor vehicle fuel, approved as to invoice form by the director ~~((: PROVIDED, That in the event of the loss or destruction of the original invoice or invoices, the person claiming a refund may submit in lieu thereof a duplicate copy of such invoice certified by the vendor, but no payment of refund based upon such duplicate invoice shall be made until after expiration of such statutory period specified in RCW 82.36.330 for filing of refund applications))~~.

Any person claiming refund by reason of exportation of motor vehicle fuel shall in addition to the invoices required furnish to the director the export certificate therefor, and the signature on the exportation certificate shall be certified by a notary public. In all cases the claim shall be signed by the person claiming the refund, if it is a corporation, by some proper officer of the corporation, or if it is a limited liability company, by some proper manager or member of the limited liability company.

Sec. 4. RCW 82.38.120 and 1996 c 104 s 9 are each amended to read as follows:

Upon receipt and approval of an application and bond, if required, the department shall issue to the applicant a license to act as a special fuel dealer or a special fuel user. However, the department may refuse to issue a special fuel dealer's license or a special fuel user's license to any person:

(1) Who formerly held either type of license which, prior to the time of filing for application, has been revoked for cause;

(2) Who is a subterfuge for the real party in interest whose license prior to the time of filing for application, has been revoked for cause;

(3) Who, as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, has had a special fuel license revoked for cause;

(4) Who has an unsatisfied debt to the state assessed under either chapter 82.36, 82.38, 82.42, or 46.87 RCW;

(5) Who formerly held as an individual, officer, director, owner, managing employee of a nonindividual licensee, or subterfuge for a real party in interest, a license issued by the federal government or a state that allowed a person to buy or sell untaxed motor vehicle or special fuel, which license, before the time of filing for application, has been revoked for cause;

(6) Who pled guilty to or was convicted as an individual, officer, director, owner, or managing employee of a nonindividual licensee in this or any other state or in any federal jurisdiction of a gross misdemeanor or felony crime directly related to the business or has been subject to a civil judgment involving fraud, misrepresentation, conversion, or dishonesty, notwithstanding chapter 9.96A RCW;

(7) Who misrepresented or concealed a material fact in obtaining a license or in reinstatement thereof;

(8) Who violated a statute or administrative rule regulating fuel taxation or distribution;

(9) Who failed to cooperate with the department's investigations by:

(a) Not furnishing papers or documents;

(b) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or

(c) Not responding to subpoenas issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;

(10) Who failed to comply with an order issued by the director; or

(11) Upon other sufficient cause being shown.

Before such refusal, the department shall grant the applicant a hearing and shall grant the applicant at least twenty days written notice of the time and place thereof.

The department shall determine from the information shown in the application or other investigation the kind and class of license to be issued. For the purpose of considering any application for a special fuel dealer's license, the department may inspect, cause an inspection, investigate, or cause an investigation of the records of this or any other state or of the federal government to ascertain the veracity of the information on the application form and the applicant's criminal and licensing history.

All licenses shall be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner thereof. License holders shall reproduce the license by photostat or other method and keep a copy on display for ready inspection at each additional place of business or other place of storage from which special fuel is sold, delivered or used and in each motor vehicle used by the license holder to transport special fuel purchased by him or her for resale, delivery or use. Every licensed special fuel user operating a motor vehicle registered in a jurisdiction other than this state shall reproduce the license and carry a photocopy thereof with each motor vehicle being operated upon the highways of this state.

A special fuel dealer may use special fuel in motor vehicles owned or operated by the dealer without securing a license as a special fuel user but the dealer is subject to all other conditions, requirements, and liabilities imposed herein upon a special fuel user.

Each special fuel dealer's license and special fuel user's license shall be valid until the expiration date if shown on the license, or until suspended or revoked for cause or otherwise canceled.

No special fuel dealer's license or special fuel user's license shall be transferable.

**NEW SECTION. Sec. 5.** It is the intent of the legislature that leaded racing fuel be exempted from payment of the motor vehicle fuel tax, as provided in section 6 of this act, since it is illegal for use on the public highways of the state

under federal law. The legislature further intends that leaded racing fuel be subject to the retail sales and use taxes under chapters 82.08 and 82.12 RCW and that the revenue collected will be earmarked as provided in section 7 of this act.

**NEW SECTION. Sec. 6.** A new section is added to chapter 82.38 RCW to read as follows:

Motor vehicle fuel that is used exclusively for racing and is illegal for use on the public highways of the state under state or federal law is exempt from the tax imposed under this chapter.

**NEW SECTION. Sec. 7.** A new section is added to chapter 82.32 RCW to read as follows:

The department of revenue shall deposit into the advanced environmental mitigation revolving account, created in RCW 47.12.340, all moneys received from the imposition on consumers of the taxes under chapters 82.08 and 82.12 RCW on the sales or use of leaded racing fuel which is exempted from the motor vehicle fuel tax under section 6 of this act.

Passed the House February 10, 1998.

Passed the Senate March 6, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.

## CHAPTER 116

[Substitute House Bill 2922]

### STATE INVESTMENT BOARD AND EMPLOYEE RETIREMENT BENEFITS BOARD-- CLARIFYING TRUSTEESHIP ROLES

AN ACT Relating to clarifying the trusteeship role of the state investment board and the employee retirement benefits board; amending RCW 41.04.020, 41.04.340, 41.04.605, 41.04.610, 41.04.615, 41.04.620, 41.04.630, 41.04.635, 41.04.640, 41.50.088, 41.50.770, 41.50.780, and 28B.50.874; and adding a new section to chapter 43.33A RCW.

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

**Sec. 1.** RCW 41.04.020 and 1982 c 107 s 1 are each amended to read as follows:

Any employee or group of employees of the state of Washington or any of its political subdivisions, or of any institution supported, in whole or in part, by the state or any of its political subdivisions, may authorize the deduction from his or ~~((their))~~ her salaries or wages and payment to another, the amount or amounts of his or ~~((their))~~ her subscription payments or contributions to any person, firm, or corporation administering, furnishing, or providing (1) medical, surgical, and hospital care or either of them, or (2) life insurance or accident and health disability insurance, or (3) any individual retirement account selected by the employee or the employee's spouse established under applicable state or federal law ~~((, or (4) any individual retirement account which is (a) offered through the committee for deferred compensation, (b) selected by the employee, and (c) established under applicable state or federal law))~~: PROVIDED, That such

authorization by said employee or group of employees, shall be first approved by the head of the department, division office or institution of the state or any political subdivision thereof, employing such person or group of persons, and filed with the department of personnel; or in the case of political subdivisions of the state of Washington, with the auditor of such political subdivision or the person authorized by law to draw warrants against the funds of said political subdivision.

**Sec. 2.** RCW 41.04.340 and 1997 c 232 s 2 are each amended to read as follows:

(1) An attendance incentive program is established for all eligible employees. As used in this section the term "eligible employee" means any employee of the state, other than eligible employees of the community and technical colleges and the state board for community and technical colleges identified in RCW 28B.50.553, and teaching and research faculty at the state and regional universities and The Evergreen State College, entitled to accumulate sick leave and for whom accurate sick leave records have been maintained. No employee may receive compensation under this section for any portion of sick leave accumulated at a rate in excess of one day per month. The state and regional universities and The Evergreen State College shall maintain complete and accurate sick leave records for all teaching and research faculty.

(2) In January of the year following any year in which a minimum of sixty days of sick leave is accrued, and each January thereafter, any eligible employee may receive remuneration for unused sick leave accumulated in the previous year at a rate equal to one day's monetary compensation of the employee for each four full days of accrued sick leave in excess of sixty days. Sick leave for which compensation has been received shall be deducted from accrued sick leave at the rate of four days for every one day's monetary compensation.

(3) At the time of separation from state service due to retirement or death, an eligible employee or the employee's estate may elect to receive remuneration at a rate equal to one day's current monetary compensation of the employee for each four full days of accrued sick leave.

~~(4) (Pursuant to this subsection, in lieu of cash remuneration the state may, with equivalent funds, provide eligible employees with a benefit plan providing for reimbursement of medical expenses. The committee for deferred compensation shall develop any benefit plan established under this subsection, but may offer and administer the plan only if (a) each eligible employee has the option of whether to receive cash remuneration or to have his or her employer transfer equivalent funds to the plan; and (b) the committee has received an opinion from the United States internal revenue service stating that participating employees, prior to the time of receiving reimbursement for expenses, will incur no United States income tax liability on the amount of the equivalent funds transferred to the plan.~~

—(5)) Remuneration or benefits received under this section shall not be included for the purpose of computing a retirement allowance under any public retirement system in this state.



~~((6) With the exception of subsection (4) of this section,)) (5) This section shall be administered, and rules shall be adopted to carry out its purposes, by the Washington personnel resources board for persons subject to chapter 41.06 RCW: PROVIDED, That determination of classes of eligible employees shall be subject to approval by the office of financial management.~~

~~((7)) (6) Should the legislature revoke any remuneration or benefits granted under this section, no affected employee shall be entitled thereafter to receive such benefits as a matter of contractual right.~~

**Sec. 3.** RCW 41.04.605 and 1987 c 475 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 41.04.610 through 41.04.635.

(1) "Salary reduction plan" means a plan whereby state employees and officers may agree to a reduction of salary which reduction will allow the employee to participate in benefits offered pursuant to 26 U.S.C. Sec. 125.

(2) ~~((Committee))~~ "Department" means the ~~((committee for deferred compensation))~~ department of retirement systems.

(3) "Salary" means a state employee's or officer's monthly salary or wages.

(4) "Dependent care program" means the program for the care of dependents pursuant to 26 U.S.C. Sec. 129 financed from funds deposited in the salary reduction account in the state treasury for the purpose of holding and disbursing the funds deposited under the auspices of the salary reduction plan.

(5) "Participant" means an individual who fulfills the eligibility and enrollment requirements under the salary reduction plan.

(6) "Plan year" means the time period established by the ~~((committee))~~ department.

**Sec. 4.** RCW 41.04.610 and 1987 c 475 s 3 are each amended to read as follows:

The ~~((committee))~~ department shall have responsibility for the formulation and adoption of a plan and policies and procedures designed to guide, direct, and administer the salary reduction plan.

**Sec. 5.** RCW 41.04.615 and 1993 c 34 s 1 are each amended to read as follows:

(1) A plan document describing the salary reduction plan shall be adopted and administered by the ~~((committee))~~ department. The ~~((committee))~~ department shall represent the state in all matters concerning the administration of the plan. The state through the ~~((committee))~~ department, may engage the services of a professional consultant or administrator on a contractual basis to serve as an agent to assist the ~~((committee))~~ department in carrying out the purposes of RCW 41.04.600 through 41.04.645.

(2) The ~~((committee))~~ department shall formulate and establish policies and procedures for the administration of the salary reduction plan that are consistent with existing state law, the internal revenue code, and the regulations adopted by

the internal revenue service as they may apply to the benefits offered to participants under the plan.

(3) The funds held by the state for the dependent care program shall be deposited in the salary reduction account in the state treasury. Any interest in excess of the amount used to defray the cost of administering the salary reduction plan shall become a part of the general fund. Unclaimed moneys remaining in the salary reduction account at the end of a plan year after all timely submitted claims for that plan year have been processed shall become a part of the dependent care administrative account. The ((committee)) department may assess each participant a fee for administering the salary reduction plan. In addition to moneys for initial costs, moneys may be appropriated from the general fund or dependent care administrative account for any expense relating to the administration of the salary reduction plan.

(4) The dependent care administrative account is created in the state treasury. The ((committee)) department may periodically bill agencies for employer savings experienced as the result of dependent care program participation by employees. All receipts from the following shall be deposited in the account: (a) Charges to agencies for all or a portion of the estimated savings due to reductions in employer contributions under the social security act; (b) charges for other similar savings; (c) unclaimed moneys in the salary reduction account at the end of the plan year after all timely submitted claims for that plan year have been processed; and (d) fees charged to participants. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for any expense related to the administration of the salary reduction plan.

(5) Every action taken by the ((committee)) department in administering RCW 41.04.600 through 41.04.645 shall be presumed to be a fair and reasonable exercise of the authority vested in or the duties imposed upon it. The ((committee)) department shall be presumed to have exercised reasonable care, diligence, and prudence and to have acted impartially as to all persons interested unless the contrary be proved by clear and convincing affirmative evidence.

**Sec. 6.** RCW 41.04.620 and 1987 c 475 s 5 are each amended to read as follows:

(1) Elected officials and all permanent officers and employees of the state are eligible to participate in the salary reduction plan and reduce their salary by agreement with the ((committee)) department. The ((committee)) department may adopt rules to permit participation in the plan by temporary employees of the state.

(2) Persons eligible under subsection (1) of this section may enter into salary reduction agreements with the state.

(3)(a) In the initial year of the salary reduction plan, an eligible person may become a participant after the adoption of the plan and before its effective date by agreeing to have a portion of his or her gross salary reduced and deposited into a dependent care account to be used for reimbursement of expenses covered by the plan.

(b) After the initial year of the salary reduction plan, an eligible person may become a participant for a full plan year, with annual benefit selection for each new plan year made before the beginning of the plan year, as determined by the ((committee)) department, or upon becoming eligible.

(c) Once an eligible person elects to participate and determines the amount his or her salary shall be reduced and the benefit for which the funds are to be used during the plan year, the agreement shall be irrevocable and may not be amended during the plan year except as provided in (d) of this subsection. Prior to making an election to participate in the salary reduction plan, the eligible person shall be informed in writing of all the benefits and reductions that will occur as a result of such election.

(d) The ((committee)) department shall provide in the salary reduction plan that a participant may enroll, terminate, or change his or her election after the plan year has begun if there is a significant change in a participant's status, as provided by 26 U.S.C. Sec. 125 and the regulations adopted under that section.

(4) The ((committee)) department shall establish as part of the salary reduction plan the procedures for and effect of withdrawal from the plan by reason of retirement, death, leave of absence, or termination of employment. To the extent possible under federal law, the ((committee)) department shall protect participants from forfeiture of rights under the plan.

(5) Any salary reduced under the salary reduction plan shall continue to be included as regular compensation for the purpose of computing the state retirement and pension benefits earned by the employee.

**Sec. 7.** RCW 41.04.630 and 1987 c 475 s 7 are each amended to read as follows:

(1) The ((committee)) department shall keep or cause to be kept full and adequate accounts and records of the assets, obligations, transactions, and affairs of a salary reduction plan created under RCW 41.04.615.

(2) The ((committee)) department shall file an annual report of the financial condition, transactions, and affairs of the salary reduction plan under the ((committee's)) department's jurisdiction. A copy of the annual report shall be filed with the speaker of the house of representatives, the president of the senate, the governor, and the state auditor.

~~((3) Members of the committee shall be deemed to stand in a fiduciary relationship to the employees participating in the salary reduction plan and shall discharge their duties in good faith and with that diligence, care, and skill which ordinary prudent persons would exercise under similar circumstances in like positions:))~~

**Sec. 8.** RCW 41.04.635 and 1987 c 475 s 8 are each amended to read as follows:

(1) The state may terminate the salary reduction plan at the end of the plan year or upon notification of federal action affecting the status of the plan.

(2) The ~~((committee))~~ department may amend the salary reduction plan at any time if the amendment does not affect the rights of the participants to receive eligible reimbursement from the participants' dependent care accounts.

Sec. 9. RCW 41.04.640 and 1987 c 475 s 9 are each amended to read as follows:

The ~~((committee))~~ department shall adopt rules to implement RCW 41.04.610 through 41.04.635.

Sec. 10. RCW 41.50.088 and 1995 c 239 s 302 are each amended to read as follows:

(1) The board shall adopt rules as necessary and exercise all the powers and perform all duties prescribed by law with respect to:

~~(((+)))~~ (a) The preselection of options for members to choose from for self-directed investment deemed by the board to be in the best interest of the member. At the board's request, the state investment board may provide investment options for purposes of this subsection;

~~(((2)))~~ (b) The selection of optional benefit payment schedules available to members and survivors of members upon the death, disability, retirement, or termination of the member. The optional benefit payments may include but not be limited to: Fixed and participating annuities, joint and survivor annuities, and payments that bridge to social security or defined benefit plan payments;

~~(((3)))~~ (c) Approval of actuarially equivalent annuities that may be purchased from the combined plan II and plan III funds under RCW 41.50.075 (2) or (3); and

~~(((4)))~~ (d) Determination of the basis for administrative charges to the self-directed investment fund to offset self-directed account expenses~~((+and~~  
~~—(5) Selection of investment options for the deferred compensation program)).~~

(2) The board shall recommend to the state investment board types of options for participant self-directed investment in the state deferred compensation plan, as deemed by the board to be reflective of the participants' preferences.

Sec. 11. RCW 41.50.770 and 1995 c 239 s 314 are each amended to read as follows:

(1) "Employee" as used in this section and RCW 41.50.780 includes all full-time, part-time, and career seasonal employees of the state, a county, a municipality, or other political subdivision of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of the government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and of the superior and district courts; and members of the state legislature or of the legislative authority of any county, city, or town.

(2) The state, through the department, and any county, municipality, or other political subdivision of the state acting through its principal supervising official or governing body is authorized to contract with an employee to defer a portion of that employee's income, which deferred portion shall in no event exceed the

amount allowable under 26 U.S.C. Sec. 457, and deposit or invest such deferred portion in a credit union, savings and loan association, bank, or mutual savings bank or purchase life insurance, shares of an investment company, or fixed and/or variable annuity contracts from any insurance company or any investment company licensed to contract business in this state.

(3) Employees participating in the state deferred compensation plan administered by the department shall self-direct the investment of the deferred portion of their income through the selection of investment options as set forth in subsection (4) of this section.

(4) The department can provide such plans as ((the employee retirement benefits board, established under RCW 41.50.086,)) it deems are in the interests of state employees. In addition to the types of investments described in this section, the ((department may)) state investment board, with respect to the state deferred compensation plan, shall invest the deferred portion of an employee's income, without limitation as to amount, ((in any of the class of investments described in RCW 43.84.150 as in effect on January 1, 1981)) in accordance with RCW 43.84.150, 43.33A.140, and 41.50.780, and pursuant to investment policy established by the state investment board for the state deferred compensation plans. The state investment board, after consultation with the employee retirement benefits board regarding any recommendations made pursuant to RCW 41.50.088(2), shall provide a set of options for participants to choose from for investment of the deferred portion of their income. Any income deferred under such a plan shall continue to be included as regular compensation, for the purpose of computing the state or local retirement and pension benefits earned by any employee.

((4)) (5) Coverage of an employee under a deferred compensation plan under this section shall not render such employee ineligible for simultaneous membership and participation in any pension system for public employees.

**Sec. 12.** RCW 41.50.780 and 1995 c 239 s 315 are each amended to read as follows:

(1) The deferred compensation principal account is hereby created in the state treasury. Any deficiency in the deferred compensation administrative account caused by an excess of administrative expenses disbursed from that account over ~~((earnings of investments of))~~ balances credited to that account shall be eliminated by transferring moneys to that account from the deferred compensation principal account.

(2) The amount of compensation deferred by employees under agreements entered into under the authority contained in RCW 41.50.770 shall be paid into the deferred compensation principal account and shall be sufficient to cover costs of administration and staffing in addition to such other amounts as determined by the department. The deferred compensation principal account shall be used to carry out the purposes of RCW 41.50.770. All eligible state employees shall be given the opportunity to participate in agreements entered into by the department

under RCW 41.50.770. State agencies shall cooperate with the department in providing employees with the opportunity to participate.

(3) Any county, municipality, or other subdivision of the state may elect to participate in any agreements entered into by the department under RCW 41.50.770, including the making of payments therefrom to the employees participating in a deferred compensation plan upon their separation from state or other qualifying service. Accordingly, the deferred compensation principal account shall be considered to be a public pension or retirement fund within the meaning of Article XXIX, section 1 of the state Constitution, for the purpose of determining eligible investments and deposits of the moneys therein.

(4) All moneys in the state deferred compensation principal account and the state deferred compensation administrative account, all property and rights purchased therewith, and all income attributable thereto, shall ~~((remain until made available to the participating employee or other beneficiary) solely the money, property, and rights of the state and participating counties, municipalities, and subdivisions (without being restricted to the provision of benefits under the plan) subject only to the claims of the state's and participating jurisdictions' general creditors. Participating jurisdictions shall each retain property rights separately))~~ be held in trust by the state investment board, as set forth under RCW 43.33A.030, for the exclusive benefit of the state deferred compensation plan's participants and their beneficiaries. Neither the participant, nor the participant's beneficiary or beneficiaries, nor any other designee, has any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payments under the plan. These payments and right thereto are nonassignable and nontransferable. Unpaid accumulated deferrals are not subject to attachment, garnishment, or execution and are not transferable by operation of law in event of bankruptcy or insolvency, except to the extent otherwise required by law.

(5) The state investment board ~~((at the request of the employee retirement benefits board as established under RCW 41.50.086, is authorized to invest))~~ has the full power to invest moneys in the state deferred compensation principal account and the state deferred compensation administrative account in accordance with RCW 43.84.150((- Except as provided in RCW 43.33A.160)), 43.33A.140, and 41.50.770, and cumulative investment directions received pursuant to RCW 41.50.770. All investment and operating costs of the state investment board associated with the investment of the deferred compensation plan assets shall be paid pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these expenses, one hundred percent of all earnings from these investments shall accrue directly to the deferred compensation principal account.

(6)(a) No state board or commission, agency, or any officer, employee, or member thereof is liable for any loss or deficiency resulting from participant investments selected pursuant to RCW 41.50.770(3).

(b) Neither the employee retirement benefits board nor the state investment board, nor any officer, employee, or member thereof is liable for any loss or

deficiency resulting from reasonable efforts to implement investment directions pursuant to RCW 41.50.770(3).

~~(7)~~ (7) The deferred compensation administrative account is hereby created in the state treasury. All expenses of the department pertaining to the deferred compensation plan including staffing and administrative expenses shall be paid out of the deferred compensation administrative account. Any excess ~~((of earnings of investments of))~~ balances credited to this account over administrative expenses disbursed from this account shall be transferred to the deferred compensation principal account at such time and in such amounts as may be determined by the department with the approval of the office of financial management. Any deficiency in the deferred compensation administrative account caused by an excess of administrative expenses disbursed from this account ~~((over earnings of investments of balances credited to this account))~~ shall be transferred to this account from the deferred compensation principal account.

~~((7))~~ (8) In addition to the duties specified in this section and RCW 41.50.770, the department shall administer the salary reduction plan established in RCW 41.04.600 through 41.04.645.

~~((8))~~ (9) The department shall keep or cause to be kept full and adequate accounts and records of the assets of each individual participant, obligations, transactions, and affairs of any deferred compensation plans created under RCW 41.50.770 and this section. The department shall account for and report on the investment of state deferred compensation plan assets or may enter into an agreement with the state investment board for such accounting and reporting.

~~((9))~~ (10) The department shall file an annual report of the financial condition, transactions, and affairs of the deferred compensation plans under its jurisdiction. A copy of the annual report shall be filed with the speaker of the house of representatives, the president of the senate, the governor, and the state auditor.

~~((10) Members of the employee retirement benefits board established under RCW 41.50.086 shall be deemed to stand in a fiduciary relationship to the employees participating in the deferred compensation plans created under RCW 41.50.770 and this section and shall discharge the duties of their respective positions in good faith and with that diligence, care, and skill which ordinary prudent persons would exercise under similar circumstances in like positions.))~~

(11) The department may adopt rules necessary to carry out the purposes of RCW 41.50.770 and this section.

**NEW SECTION. Sec. 13.** A new section is added to chapter 43.33A RCW to read as follows:

The state investment board has the full power to establish investment policy, develop participant investment options, and manage investment funds for the state deferred compensation plan, consistent with the provisions of RCW 41.50.770 and 41.50.780. The board may continue to offer the investment options provided as of the effective date of this act until the board establishes a deferred compensation

plan investment policy and adopts new investment options after considering the recommendations of the employee retirement benefits board.

**Sec. 14.** RCW 28B.50.874 and 1991 c 238 s 83 are each amended to read as follows:

When the state system of community and technical colleges assumes administrative control of the vocational-technical institutes, personnel employed by the vocational-technical institutes shall:

(1) Suffer no reduction in compensation, benefits, seniority, or employment status. After September 1, 1991, classified employees shall continue to be covered by chapter 41.56 RCW and faculty members and administrators shall be covered by chapter 28B.50 RCW;

(2) To the extent applicable to faculty members, any faculty currently employed on a "continuing contract" basis under RCW 28A.405.210 be awarded tenure pursuant to RCW 28B.50.851 through 28B.50.873, except for any faculty members who are provisional employees under RCW 28A.405.220;

(3) Be eligible to participate in the health care and other insurance plans provided by the health care authority and the state employee benefits board pursuant to chapter 41.05 RCW;

(4) Be eligible to participate in old age annuities or retirement income plans under the rules of the state board for community and technical colleges pursuant to RCW 28B.10.400 or the teachers' retirement system plan I for personnel employed before July 1, 1977, or plan II for personnel employed after July 1, 1977, under chapter 41.32 RCW; however, no affected vocational-technical institute employee shall be required to choose from among any available retirement plan options prior to six months after September 1, 1991;

(5) Have transferred to their new administrative college district all accrued sick and vacation leave and thereafter shall earn and use all such leave under the rule established pursuant to RCW 28B.50.551;

(6) Be eligible to participate in the deferred compensation plan (~~pursuant to RCW 41.04.250~~) and the dependent care program pursuant to RCW 41.04.600 under the applicable rules (~~established by the state deferred compensation committee~~).

An exclusive bargaining representative certified to represent a bargaining unit covering employees of a vocational technical institute on September 1, 1991, shall remain the exclusive representative of such employees thereafter until and unless such representative is replaced or decertified in accordance with state law.

Any collective bargaining agreement in effect on June 30, 1991, shall remain in effect as it applies to employees of vocational technical institutes until its expiration or renewal date or until renegotiated or renewed in accordance with chapter 28B.52 or 41.56 RCW. After the expiration date of a collective bargaining agreement, all of the terms and conditions specified in the collective bargaining agreement, as it applies to employees of vocational-technical institutes, shall remain in effect until the effective date of a subsequent agreement, not to exceed one year from the termination date stated in the



agreement. The board of trustees and the employees may mutually agree to continue the terms and conditions of the agreement beyond the one year extension. However, nothing in this section shall be construed to deny any employee right granted under chapter 28B.52 or 41.56 RCW. Labor relations processes and agreements covering faculty members of vocational technical institutes after September 1, 1991, shall be governed by chapter 28B.52 RCW. Labor relations processes and agreements covering classified employees of vocational technical institutes after September 1, 1991, shall continue to be governed by chapter 41.56 RCW.

Passed the House February 17, 1998.

Passed the Senate March 5, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.

## CHAPTER 117

[House Bill 3053]

### DISTRIBUTION OPTIONS UNDER TEACHERS' RETIREMENT SYSTEM, PLAN III

AN ACT Relating to distribution options for members of teachers' retirement system, plan III; amending RCW 41.34.070; and declaring an emergency.

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

**Sec. 1.** RCW 41.34.070 and 1995 c 239 s 207 are each amended to read as follows:

(1) If the member retires, becomes disabled, or otherwise terminates employment, the balance in the member's account may be distributed in accordance with an option selected by the member either as a lump sum or pursuant to other options authorized by the board.

(2) If the member dies while in service, the balance of the member's account may be distributed in accordance with an option selected by the member either as a lump sum or pursuant to other options authorized by the board. The distribution shall be made to such person or persons as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, the balance of the member's account in the retirement system, less any amount identified as owing to an obligee upon withdrawal of such account balance pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there is no surviving spouse, then to such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department.

(3) If a member has a terminal illness and terminates from employment, the member may choose to have the balance in the member's account distributed as a lump sum payment based on the most recent valuation in order to expedite the distribution. The department shall make this payment within ten working days

after receipt of notice of termination of employment, documentation verifying the terminal illness, and an application for payment.

(4) The distribution under subsections (1) ~~((or)), (2), or (3)~~ of this section shall be less any amount identified as owing to an obligee upon withdrawal pursuant to a court order filed under RCW 41.50.670.

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

Passed the House February 16, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.

**CHAPTER 118**

[Senate Bill 5164]

**MOBILE HOME PARK TENANTS AND OCCUPANTS—EVICTIONS**

AN ACT Relating to mobile home park tenants and occupants; and amending RCW 59.20.030, 59.20.080, and 59.20.090.

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

**Sec. 1.** RCW 59.20.030 and 1993 c 66 s 15 are each amended to read as follows:

For purposes of this chapter:

(1) "Abandoned" as it relates to a mobile home owned by a tenant in a mobile home park, mobile home park cooperative, or mobile home park subdivision or tenancy in a mobile home lot means the tenant has defaulted in rent and by absence and by words or actions reasonably indicates the intention not to continue tenancy;

(2) "Landlord" means the owner of a mobile home park and includes the agents of a landlord;

(3) "Mobile home lot" means a portion of a mobile home park designated as the location of one mobile home and its accessory buildings, and intended for the exclusive use as a primary residence by the occupants of that mobile home;

(4) "Mobile home park" means any real property which is rented or held out for rent to others for the placement of two or more mobile homes for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy;

(5) "Mobile home park cooperative" means real property consisting of common areas and two or more lots held out for placement of mobile homes in which both the individual lots and the common areas are owned by an association of shareholders which leases or otherwise extends the right to occupy individual lots to its own members;

(6) "Mobile home park subdivision" means real property, whether it is called a subdivision, condominium, or planned unit development, consisting of common areas and two or more lots held for placement of mobile homes in which there is private ownership of the individual lots and common, undivided ownership of the common areas by owners of the individual lots;

(7) "Recreational vehicle" means a travel trailer, motor home, truck camper, or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot;

(8) "Tenant" means any person, except a transient, who rents a mobile home lot; ~~((and))~~

(9) "Transient" means a person who rents a mobile home lot for a period of less than one month for purposes other than as a primary residence;

(10) "Occupant" means any person, including a live-in care provider, other than a tenant, who occupies a mobile home and mobile home lot.

**Sec. 2.** RCW 59.20.080 and 1993 c 66 s 19 are each amended to read as follows:

(1) A landlord shall not terminate or fail to renew a tenancy of a tenant or the occupancy of an occupant, of whatever duration except for one or more of the following reasons:

(a) Substantial violation, or repeated or periodic violations of the rules of the mobile home park as established by the landlord at the inception of the tenancy or as assumed subsequently with the consent of the tenant or for violation of the tenant's duties as provided in RCW 59.20.140. The tenant shall be given written notice to cease the rule violation immediately. The notice shall state that failure to cease the violation of the rule or any subsequent violation of that or any other rule shall result in termination of the tenancy, and that the tenant shall vacate the premises within fifteen days: PROVIDED, That for a periodic violation the notice shall also specify that repetition of the same violation shall result in termination: PROVIDED FURTHER, That in the case of a violation of a "material change" in park rules with respect to pets, tenants with minor children living with them, or recreational facilities, the tenant shall be given written notice under this chapter of a six month period in which to comply or vacate;

(b) Nonpayment of rent or other charges specified in the rental agreement, upon five days written notice to pay rent and/or other charges or to vacate;

(c) Conviction of the tenant of a crime, commission of which threatens the health, safety, or welfare of the other mobile home park tenants. The tenant shall be given written notice of a fifteen day period in which to vacate;

(d) Failure of the tenant to comply with local ordinances and state laws and regulations relating to mobile homes or mobile home living within a reasonable time after the tenant's receipt of notice of such noncompliance from the appropriate governmental agency;

(e) Change of land use of the mobile home park including, but not limited to, conversion to a use other than for mobile homes or conversion of the mobile home park to a mobile home park cooperative or mobile home park subdivision: PROVIDED, That the landlord shall give the tenants twelve months' notice in advance of the effective date of such change, except that for the period of six months following April 28, 1989, the landlord shall give the tenants eighteen months' notice in advance of the proposed effective date of such change;

(f) Engaging in "criminal activity." "Criminal activity" means a criminal act defined by statute or ordinance that threatens the health, safety, or welfare of the tenants. A park owner seeking to evict a tenant or occupant under this subsection need not produce evidence of a criminal conviction, even if the alleged misconduct constitutes a criminal offense. Notice from a law enforcement agency of criminal activity constitutes sufficient grounds, but not the only grounds, for an eviction under this subsection. Notification of the seizure of illegal drugs under RCW 59.20.155 is evidence of criminal activity and is grounds for an eviction under this subsection. The requirement that any tenant or occupant register as a sex offender under RCW 9A.44.130 is grounds for eviction under this subsection. If criminal activity is alleged to be a basis of termination, the park owner may proceed directly to an unlawful detainer action;

(g) The tenant's application for tenancy contained a material misstatement that induced the park owner to approve the tenant as a resident of the park, and the park owner discovers and acts upon the misstatement within one year of the time the resident began paying rent;

(h) If the landlord serves a tenant three fifteen-day notices within a twelve-month period to comply or vacate for failure to comply with the material terms of the rental agreement or park rules. The applicable twelve-month period shall commence on the date of the first violation;

(i) Failure of the tenant to comply with obligations imposed upon tenants by applicable provisions of municipal, county, and state codes, statutes, ordinances, and regulations, including chapter 59.20 RCW. The landlord shall give the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days;

(j) The tenant engages in disorderly or substantially annoying conduct upon the park premises that results in the destruction of the rights of others to the peaceful enjoyment and use of the premises. The landlord shall give the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days;

(k) The tenant creates a nuisance that materially affects the health, safety, and welfare of other park residents. The landlord shall give the tenant written notice to cease the conduct that constitutes a nuisance immediately. The notice must state that failure to cease the conduct will result in termination of the tenancy and that the tenant shall vacate the premises in five days;

(l) Any other substantial just cause that materially affects the health, safety, and welfare of other park residents. The landlord shall ~~((be)) give ((shall give))~~ the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days; or

(m) Failure to pay rent by the due date provided for in the rental agreement three or more times in a twelve-month period, commencing with the date of the first violation, after service of a five-day notice to comply or vacate.

(2) Within five days of a notice of eviction as required by subsection (1)(a) of this section, the landlord and tenant shall submit any dispute to mediation. The parties may agree in writing to mediation by an independent third party or through industry mediation procedures. If the parties cannot agree, then mediation shall be through industry mediation procedures. A duty is imposed upon both parties to participate in the mediation process in good faith for a period of ten days for an eviction under subsection (1)(a) of this section. It is a defense to an eviction under subsection (1)(a) of this section that a landlord did not participate in the mediation process in good faith.

(3) Chapters 59.12 and 59.18 RCW govern the eviction of recreational vehicles from mobile home parks.

Sec. 3. RCW 59.20.090 and 1980 c 152 s 2 are each amended to read as follows:

(1) Unless otherwise agreed rental agreements shall be for a term of one year. Any rental agreement of whatever duration shall be automatically renewed for the term of the original rental agreement, unless

~~((a)) a different specified term is agreed upon~~

~~((b) The landlord serves notice of termination without cause upon the tenant prior to the expiration of the rental agreement. PROVIDED, That under such circumstances, at the expiration of the prior rental agreement the tenant shall be considered a month-to-month tenant upon the same terms as in the prior rental agreement until the tenancy is terminated).~~

(2) A landlord seeking to increase the rent upon expiration of the term of a rental agreement of any duration shall notify the tenant in writing three months prior to the effective date of any increase in rent ~~((: PROVIDED, That if a landlord serves a tenant with notice of a rental increase at the same time or subsequent to serving the tenant with notice of termination without cause, such rental increase shall not become effective until the date the tenant is required to vacate the leased premises pursuant to the notice of termination or three months from the date notice of rental increase is served, whichever is later)).~~

(3) A tenant shall notify the landlord in writing one month prior to the expiration of a rental agreement of an intention not to renew.

(4)(a) The tenant may terminate the rental agreement upon thirty days written notice whenever a change in the location of the tenant's employment requires a change in his residence, and shall not be liable for rental following such termination unless after due diligence and reasonable effort the landlord is not

able to rent the mobile home lot at a fair rental. If the landlord is not able to rent the lot, the tenant shall remain liable for the rental specified in the rental agreement until the lot is rented or the original term ends;

(b) Any tenant who is a member of the armed forces may terminate a rental agreement with less than thirty days notice if he receives reassignment orders which do not allow greater notice.

Passed the Senate March 7, 1998.

Passed the House March 4, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.

## CHAPTER 119

[Substitute Senate Bill 5532]

### MEDIATION REGARDING LAND-USE DECISIONS INVOLVING CONDITIONAL USE PERMITS

AN ACT Relating to mediation in land-use decisions involving conditional or special use permits; adding a new section to chapter 35.63 RCW; adding a new section to chapter 35A.63 RCW; adding a new section to chapter 36.70 RCW; adding a new section to chapter 35.22 RCW; and adding a new section to chapter 36.32 RCW.

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

**NEW SECTION.** **Sec. I.** A new section is added to chapter 35.63 RCW to read as follows:

(1) Prior to filing an appeal of a final decision by a hearing examiner involving a conditional or special use permit application requested by a party that is licensed or certified by the department of social and health services or the department of corrections, the aggrieved party must, within five days after the final decision, initiate formal mediation procedures in an attempt to resolve the parties' differences. If, after initial evaluation of the dispute, the parties agree to proceed with a mediation, the mediation shall be conducted by a trained mediator selected by agreement of the parties. The agreement to mediate shall be in writing and subject to RCW 5.60.070. If the parties are unable to agree on a mediator, each party shall nominate a mediator and the mediator shall be selected by lot from among the nominees. The mediator must be selected within five days after formal mediation procedures are initiated. The mediation process must be completed within fourteen days from the time the mediator is selected except that the mediation process may extend beyond fourteen days by agreement of the parties. The mediator shall, within the fourteen-day period or within the extension if an extension is agreed to, provide the parties with a written summary of the issues and any agreements reached. If the parties agree, the mediation report shall be made available to the governing jurisdiction. The cost of the mediation shall be shared by the parties.

(2) Any time limits for filing of appeals are tolled during the pendency of the mediation process.

(3) As used in this section, "party" does not include county, city, or town.

**NEW SECTION.** **Sec. 2.** A new section is added to chapter 35A.63 RCW to read as follows:

A final decision by a hearing examiner involving a conditional or special use permit application under this chapter that is requested by a party that is licensed or certified by the department of social and health services or the department of corrections is subject to mediation under section 1 of this act before an appeal may be filed.

**NEW SECTION.** **Sec. 3.** A new section is added to chapter 36.70 RCW to read as follows:

A final decision by a hearing examiner involving a conditional or special use permit application under this chapter that is requested by a party that is licensed or certified by the department of social and health services or the department of corrections is subject to mediation under section 1 of this act before an appeal may be filed.

**NEW SECTION.** **Sec. 4.** A new section is added to chapter 35.22 RCW to read as follows:

A final decision by a hearing examiner involving a conditional or special use permit application under a home-rule charter that is requested by a party that is licensed or certified by the department of social and health services or the department of corrections is subject to mediation under section 1 of this act before an appeal may be filed.

**NEW SECTION.** **Sec. 5.** A new section is added to chapter 36.32 RCW to read as follows:

A final decision by a hearing examiner involving a conditional or special use permit application under a home-rule charter that is requested by a party that is licensed or certified by the department of social and health services or the department of corrections is subject to mediation under section 1 of this act before an appeal may be filed.

Passed the Senate February 9, 1998.

Passed the House March 5, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.

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## CHAPTER 120

[Senate Bill 6169]

### THIRD-PARTY REAL ESTATE APPRAISALS—REGULATION

AN ACT Relating to lenders use of third-party real estate appraisals to conform with federal requirements; and amending RCW 18.140.020.

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

**Sec. 1.** RCW 18.140.020 and 1997 c 399 s 2 are each amended to read as follows:

(1) No person other than a state-certified or state-licensed real estate appraiser may receive compensation of any form for a real estate appraisal or an appraisal review. However, compensation may be provided for brokers price opinions prepared by a real estate licensee, licensed under chapter 18.85 RCW.

(2) No person, other than a state-certified or state-licensed real estate appraiser, may assume or use that title or any title, designation, or abbreviation likely to create the impression of certification or licensure as a real estate appraiser by this state.

(3) A person who is not certified or licensed under this chapter shall not prepare any appraisal of real estate located in this state, except as provided under subsection (1) of this section.

(4) This section does not preclude a staff employee of a governmental entity from performing an appraisal or an appraisal assignment within the scope of his or her employment insofar as the performance of official duties for the governmental entity are concerned. Such an activity for the benefit of the governmental entity is exempt from the requirements of this chapter.

(5) This chapter does not preclude an individual person licensed by the state of Washington as a real estate broker or as a real estate salesperson from issuing a brokers price opinion. However, if the brokers price opinion is written, or given as evidence in any legal proceeding, and is issued to a person who is not a prospective seller, buyer, lessor, or lessee as the only intended user, then the brokers price opinion shall contain a statement, in an obvious location within the written document or specifically and affirmatively in spoken testimony, that substantially states: "This brokers price opinion is not an appraisal as defined in chapter 18.140 RCW and has been prepared by a real estate licensee, licensed under chapter 18.85 RCW, who . . . . (is/is not) also state certified or state licensed as a real estate appraiser under chapter 18.140 RCW." However, the brokers price opinion issued under this subsection may not be used as an appraisal in conjunction with a federally related transaction.

(6) This section does not apply to an appraisal or an appraisal review performed for a financial institution or mortgage broker by an employee or third party, when such appraisal or appraisal review is not required to be performed by a state-certified or state-licensed real estate appraiser by the appropriate federal financial institutions regulatory agency.

(7) This section does not apply to an attorney licensed to practice law in this state or to a certified public accountant, as defined in RCW 18.04.025, who evaluates real property in the normal scope of his or her professional services.

Passed the Senate February 14, 1998.

Passed the House March 3, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.



## CHAPTER 121

[Engrossed Substitute Senate Bill 6174]

## SPECIAL DISTRICT COMMISSIONERS COMPENSATION

AN ACT Relating to special purpose district commissioner per diem compensation; amending RCW 35.61.150, 52.14.010, 53.12.260, 54.12.080, 57.12.010, 68.52.220, 70.44.050, 85.05.410, 85.06.380, 85.08.320, 85.24.080, 86.09.283, 87.03.460, and 36.57A.050; and adding a new section to chapter 85.38 RCW.

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

**Sec. 1.** RCW 35.61.150 and 1965 c 7 s 35.61.150 are each amended to read as follows:

Metropolitan park commissioners shall perform their duties (~~without compensation~~) and may provide, by resolution passed by the commissioners, for the payment of compensation to each of its commissioners at a rate of up to seventy dollars for each day or portion of a day devoted to the business of the district. However, the compensation for each commissioner must not exceed six thousand seven hundred twenty dollars per year.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the clerk of the board. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

**Sec. 2.** RCW 52.14.010 and 1994 c 223 s 48 are each amended to read as follows:

The affairs of the district shall be managed by a board of fire commissioners composed of three registered voters residing in the district except as provided in RCW 52.14.015 and 52.14.020. Each member shall each receive (~~fifty~~) seventy dollars per day or portion thereof, not to exceed (~~four~~) six thousand (~~eight~~) seven hundred twenty dollars per year, for attendance at board meetings and for performance of other services in behalf of the district.

In addition, they shall receive necessary expenses incurred in attending meetings of the board or when otherwise engaged in district business, and shall be entitled to receive the same insurance available to all fire fighters of the district: PROVIDED, That the premiums for such insurance, except liability insurance, shall be paid by the individual commissioners who elect to receive it.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

The board shall fix the compensation to be paid the secretary and all other agents and employees of the district. The board may, by resolution adopted by

unanimous vote, authorize any of its members to serve as volunteer fire fighters without compensation. A commissioner actually serving as a volunteer fire fighter may enjoy the rights and benefits of a volunteer fire fighter.

**Sec. 3.** RCW 53.12.260 and 1992 c 146 s 12 are each amended to read as follows:

(1) Each commissioner of a port district shall receive (~~(fifty)~~) seventy dollars per day or portion thereof spent (a) in actual attendance at official meetings of the port district commission, or (b) in performance of other service in behalf of the district. The total per diem compensation of a port commissioner shall not exceed (~~(four)~~) six thousand (~~(eight)~~) seven hundred twenty dollars in a year, or (~~(six)~~) eight thousand four hundred dollars in any year for a port district with gross operating income of twenty-five million or more in the preceding calendar year.

(2) Port commissioners shall receive additional compensation as follows: (a) Each commissioner of a port district with gross operating revenues of twenty-five million dollars or more in the preceding calendar year shall receive a salary of five hundred dollars per month; and (b) each commissioner of a port district with gross operating revenues of from one million dollars to less than twenty-five million dollars in the preceding calendar year shall receive a salary of two hundred dollars per month.

(3) In lieu of the compensation specified in this section, a port commission may set compensation to be paid to commissioners.

(4) For any commissioner who has not elected to become a member of public employees retirement system before May 1, 1975, the compensation provided pursuant to this section shall not be considered salary for purposes of the provisions of any retirement system created pursuant to the general laws of this state nor shall attendance at such meetings or other service on behalf of the district constitute service as defined in RCW 41.40.010(9): PROVIDED, That in the case of a port district when commissioners are receiving compensation and contributing to the public employees retirement system, these benefits shall continue in full force and effect notwithstanding the provisions of RCW 53.12.260 and 53.12.265.

**Sec. 4.** RCW 54.12.080 and 1997 c 28 s 1 are each amended to read as follows:

(1) Commissioners of public utility districts are eligible to receive salaries as follows:

(a) Each public utility district commissioner of a district operating utility properties shall receive a salary of one thousand dollars per month during a calendar year if the district received total gross revenue of over fifteen million dollars during the fiscal year ending June 30th before the calendar year. However, the board of commissioners of such a public utility district may pass a resolution increasing the rate of salary up to thirteen hundred dollars per month.

(b) Each public utility district commissioner of a district operating utility properties shall receive a salary of seven hundred dollars per month during a

calendar year if the district received total gross revenue of from two million dollars to fifteen million dollars during the fiscal year ending June 30th before the calendar year. However, the board of commissioners of such a public utility district may pass a resolution increasing the rate of salary up to nine hundred dollars per month.

(c) Commissioners of other districts shall serve without salary. However, the board of commissioners of such a public utility district may pass a resolution providing for salaries not exceeding four hundred dollars per month for each commissioner.

(2) In addition to salary, all districts may provide by resolution for the payment of per diem compensation to each commissioner at a rate not exceeding ~~((fifty))~~ seventy dollars for each day or major part thereof devoted to the business of the district, and days upon which he or she attends meetings of the commission of his or her district or meetings attended by one or more commissioners of two or more districts called to consider business common to them, but such compensation paid during any one year to a commissioner shall not exceed ~~((seven))~~ nine thousand eight hundred dollars. Per diem compensation shall not be paid for services of a ministerial or professional nature.

(3) Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the district as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

(4) Each district commissioner shall be reimbursed for reasonable expenses actually incurred in connection with such business and meetings, including his or her subsistence and lodging and travel while away from his or her place of residence.

(5) Any district providing group insurance for its employees, covering them, their immediate family, and dependents, may provide insurance for its commissioner with the same coverage.

**Sec. 5.** RCW 57.12.010 and 1996 c 230 s 401 are each amended to read as follows:

The governing body of a district shall be a board of commissioners consisting of three members, or five members as provided in RCW 57.12.015, or more, as provided in the event of merger or consolidation. The board shall annually elect one of its members as president and another as secretary.

The board shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings shall be by resolution recorded in a book kept for that purpose which shall be a public record.

A district shall provide by resolution for the payment of compensation to each of its commissioners at a rate of ~~((fifty))~~ seventy dollars for each day or portion thereof devoted to the business of the district. However the compensation for each commissioner shall not exceed ~~((four))~~ six thousand ~~((eight))~~ seven

hundred twenty dollars per year. In addition, the secretary may be paid a reasonable sum for clerical services.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during the commissioner's term of office, by a written waiver filed with the district at any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

No commissioner shall be employed full time by the district. A commissioner shall be reimbursed for reasonable expenses actually incurred in connection with district business, including subsistence and lodging while away from the commissioner's place of residence and mileage for use of a privately-owned vehicle at the mileage rate authorized in RCW 43.03.060.

**Sec. 6.** RCW 68.52.220 and 1994 c 223 s 77 are each amended to read as follows:

The affairs of the district shall be managed by a board of cemetery district commissioners composed of three members. Members of the board (~~shall receive no compensation for their services, but~~) shall receive expenses necessarily incurred in attending meetings of the board or when otherwise engaged in district business. The board may provide, by resolution passed by the commissioners, for the payment of compensation to each of its commissioners at a rate of up to seventy dollars for each day or portion of a day devoted to the business of the district. However, the compensation for each commissioner must not exceed six thousand seven hundred twenty dollars per year.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the clerk of the board. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made. The board shall fix the compensation to be paid the secretary and other employees of the district. Cemetery district commissioners and candidates for cemetery district commissioner are exempt from the requirements of chapter 42.17 RCW.

The initial cemetery district commissioners shall assume office immediately upon their election and qualification. Staggering of terms of office shall be accomplished as follows: (1) The person elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or a five-year term of office if the election is held in an even-numbered year; (2) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is held in an odd-numbered year or a three-year term of office if the election is held in an even-numbered year; and (3) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The initial

commissioners shall assume office immediately after they are elected and qualified but their terms of office shall be calculated from the first day of January after the election.

Thereafter, commissioners shall be elected to six-year terms of office. Commissioners shall serve until their successors are elected and qualified and assume office as provided in RCW 29.04.170.

The polling places for a cemetery district election may be located inside or outside the boundaries of the district, as determined by the auditor of the county in which the cemetery district is located, and no such election shall be held irregular or void on that account.

**Sec. 7.** RCW 70.44.050 and 1985 c 330 s 7 are each amended to read as follows:

A district shall provide by resolution for the payment of compensation to each of its commissioners at a rate of ~~((fifty))~~ seventy dollars for each day or portion thereof devoted to the business of the district, and days upon which he or she attends meetings of the commission of his or her own district, or meetings attended by one or more commissioners of two or more districts called to consider business common to them, except that the total compensation paid to such commissioner during any one year shall not exceed ~~((four))~~ six thousand ~~((eight))~~ seven hundred twenty dollars~~((+ PROVIDED, That))~~. The commissioners may not be compensated for services performed of a ministerial or professional nature.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the district as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

Any district providing group insurance for its employees, covering them, their immediate family, and dependents, may provide insurance for its commissioners with the same coverage. Each commissioner shall be reimbursed for reasonable expenses actually incurred in connection with such business and meetings, including his or her subsistence and lodging and travel while away from his or her place of residence. No resolution shall be adopted without a majority vote of the whole commission. The commission shall organize by election of its own members of a president and secretary, shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings of the commission shall be by motion or resolution recorded in a book or books kept for such purpose, which shall be public records.

**Sec. 8.** RCW 85.05.410 and 1991 c 349 s 20 are each amended to read as follows:

Members of the board of diking commissioners of any diking district in this state may receive as compensation the sum of up to ~~((fifty))~~ seventy dollars for attendance at official meetings of the district and for each day or major part

thereof for all necessary services actually performed in connection with their duties as commissioners, and shall receive the same compensation as other labor of a like character for all other necessary work or services performed in connection with their duties: PROVIDED, That such compensation shall not exceed ~~((four))~~ six thousand ~~((eight))~~ seven hundred twenty dollars in one calendar year, except when the commissioners declare an emergency. Allowance of such compensation shall be established and approved at regular meetings of the board, and when a copy of the extracts of minutes of the board meeting relative thereto showing such approval is certified by the secretary of such board and filed with the county auditor, the allowance made shall be paid as are other claims against the district.

Each commissioner is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the commissioner's place of residence, and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

Sec. 9. RCW 85.06.380 and 1991 c 349 s 21 are each amended to read as follows:

In performing their duties under the provisions of this title the board and members of the board of drainage commissioners may receive as compensation up to ~~((fifty))~~ seventy dollars for attendance at official meetings of the district and for each day or major part thereof for all necessary services actually performed in connection with their duties as commissioners: PROVIDED, That such compensation shall not exceed ~~((four))~~ six thousand ~~((eight))~~ seven hundred twenty dollars in one calendar year: PROVIDED FURTHER, That such services and compensation are allowed and approved at a regular meeting of the board. Upon the submission of a copy, certified by the secretary, of the extracts of the relevant minutes of the board showing such approval, to the county auditor, the same shall be paid as other claims against the district are paid. Each commissioner is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the commissioner's place of residence and mileage for use of a privately-owned vehicle in accordance with chapter 42.24 RCW.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

**Sec. 10.** RCW 85.08.320 and 1991 c 349 s 22 are each amended to read as follows:

The compensation of the superintendent of construction, the board of appraisers hereinafter provided for, and any special engineer, attorney or agent employed by the district in connection with the improvement, the maximum wages to be paid, and the maximum price of materials to be used, shall be fixed by the district board of supervisors. Members of the board of supervisors may receive compensation up to ~~((fifty))~~ seventy dollars for attending each official meeting of the district and for each day or major part thereof for all necessary services actually performed in connection with their duties as supervisors: PROVIDED, That such compensation shall not exceed ~~((four))~~ six thousand ~~((eight))~~ seven hundred twenty dollars in one calendar year. Each supervisor shall be entitled to reimbursement for reasonable expenses actually incurred in connection with business, including subsistence and lodging while away from the supervisor's place of residence and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW. All costs of construction or maintenance done under the direction of the board of supervisors shall be paid upon vouchers or payrolls verified by two of the said supervisors. All costs of construction and all other expenses, fees and charges on account of such improvement shall be paid by warrants drawn by the county auditor upon the county treasurer upon the proper fund, and shall draw interest at a rate determined by the county legislative authority until paid or called by the county treasurer as warrants of the county are called.

Any supervisor may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the supervisor's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

**Sec. 11.** RCW 85.24.080 and 1991 c 349 s 23 are each amended to read as follows:

The members of the board may receive as compensation up to ~~((fifty))~~ seventy dollars for attendance at official meetings of the district and for each day or major part thereof for all necessary services actually performed in connection with their duties as commissioners: PROVIDED, That such compensation shall not exceed ~~((four))~~ six thousand ~~((eight))~~ seven hundred twenty dollars in one calendar year: PROVIDED FURTHER, That the board may fix a different salary for the secretary thereof in lieu of the per diem. Each commissioner is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the commissioner's place of residence, and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW. The salary and expenses shall be paid by the treasurer of the fund, upon orders made by the board. Each

member of the board must before being paid for expenses, take vouchers therefore from the person or persons to whom the particular amount was paid, and must also make affidavit that the amounts were necessarily incurred and expended in the performance of his or her duties.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

**NEW SECTION. Sec. 12.** A new section is added to chapter 85.38 RCW to read as follows:

The members of the governing body may each receive up to seventy dollars for attendance at official meetings of the governing body and for each day or major part thereof for all necessary services actually performed in connection with their duties as a member. The governing body shall fix the compensation to be paid to the members, secretary, and all other agents and employees of the district. Compensation for the members shall not exceed six thousand seven hundred twenty dollars in one calendar year. A member is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the member's place of residence, and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW.

Any member may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the member's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

**Sec. 13.** RCW 86.09.283 and 1991 c 349 s 24 are each amended to read as follows:

The board of directors may each receive up to ~~((fifty))~~ seventy dollars for attendance at official meetings of the board and for each day or major part thereof for all necessary services actually performed in connection with their duties as director. The board shall fix the compensation to be paid to the directors, secretary, and all other agents and employees of the district. Compensation for the directors shall not exceed ~~((four))~~ six thousand ~~((eight))~~ seven hundred twenty dollars in one calendar year. A director is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the director's place of residence, and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW.



Any director may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the director's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

**Sec. 14.** RCW 87.03.460 and 1990 c 38 s 1 are each amended to read as follows:

In addition to their reasonable expenses in accordance with chapter 42.24 RCW, the directors shall each receive an amount for attending meetings and while performing other services for the district. The amount shall be fixed by resolution and entered in the minutes of the proceedings of the board. It shall not exceed ~~((fifty))~~ seventy dollars for each day or portion thereof spent by a director for such attendance or performance. The total amount of such additional compensation received by a director may not exceed ~~((four))~~ six thousand ~~((eight))~~ seven hundred twenty dollars in a calendar year. The board shall fix the compensation of the secretary and all other employees.

Any director may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the director's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

**Sec. 15.** RCW 36.57A.050 and 1983 c 65 s 3 are each amended to read as follows:

Within sixty days of the establishment of the boundaries of the public transportation benefit area the members of the county legislative authority and the elected representative of each city within the area shall provide for the selection of the governing body of such area, the public transportation benefit area authority, which shall consist of elected officials selected by and serving at the pleasure of the governing bodies of component cities within the area and the county legislative authority of each county within the area. If at the time a public transportation benefit area authority assumes the public transportation functions previously provided under the Interlocal Cooperation Act (chapter 39.34 RCW) there are citizen positions on the governing board of the transit system, those positions may be retained as positions on the governing board of the public transportation benefit area authority.

Within such sixty-day period, any city may by resolution of its legislative body withdraw from participation in the public transportation benefit area. The county legislative authority and each city remaining in the public transportation benefit area may disapprove and prevent the establishment of any governing body of a public transportation benefit area if the composition thereof does not meet its approval.

In no case shall the governing body of a single county public transportation benefit area be greater than nine members and in the case of a multicounty area, fifteen members. Those cities within the transportation benefit area and excluded from direct membership on the authority are hereby authorized to designate a member of the authority who shall be entitled to represent the interests of such city which is excluded from direct membership on the authority. The legislative body of such city shall notify the authority as to the determination of its authorized representative on the authority.

Each member of the authority is eligible to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 and to receive compensation, as set by the authority, in an amount not to exceed forty-four dollars for each day during which the member attends official meetings of the authority or performs prescribed duties approved by the chairman of the authority. Except that the authority may, by resolution, increase the payment of per diem compensation to each member from forty-four dollars up to seventy dollars per day or portion of a day for attendance at board meetings and for performance of other services on behalf of the authority. In no event may a member be compensated in any year for more than seventy-five days, except the chairman who may be paid compensation for not more than one hundred days: PROVIDED, That compensation shall not be paid to an elected official or employee of federal, state, or local government who is receiving regular full-time compensation from such government for attending meetings and performing prescribed duties of the authority.

Passed the Senate February 16, 1998.

Passed the House March 4, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.

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## CHAPTER 122

[Senate Bill 6355]

### SHARE INSURANCE FOR CREDIT UNIONS—REGULATION

AN ACT Relating to share insurance for credit unions; amending RCW 31.12A.007, 31.12.407, and 31.12.408; adding new sections to chapter 31.12A RCW; adding a new section to chapter 31.12 RCW; and providing expiration dates.

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

**Sec. 1.** RCW 31.12A.007 and 1996 c 5 s 4 are each amended to read as follows:

(1) Members with a composite capital, asset quality, management, earnings, and liquidity rating by the department of three, four, or five shall, by September 1, 1996, file a:

(a) Completed application for insurance of share accounts with the national credit union administration to become insured under the federal share insurance program, with a copy promptly forwarded to the director by the applicant;

(b) Completed application to merge into a credit union with the director under RCW (~~(31.12.695)~~) 31.12.461; or

(c) Detailed notice of liquidation of the credit union with the director under RCW (~~(31.12.725)~~) 31.12.474.

Members with a composite capital adequacy, asset quality, management, earnings, and liquidity rating of one or two shall accomplish one of the acts set forth in (a) through (c) of this subsection by December 1, 1996.

Each member shall promptly forward a copy of the application or notice to the association.

If a member fails to file the application or notice as required by this section the failure will constitute an unsafe and unsound condition or practice that seriously jeopardizes the interests of the member's depositors and shareholders. The failure shall constitute grounds for the director to issue a temporary order under RCW 31.12.595 requiring the member to complete the application or notice and to take such other action as the director deems necessary, and shall constitute grounds for the director to issue a notice of charges under RCW 31.12.585.

(2) The association's guarantee of a member credit union will cease upon the earlier of: (a) The member's completion of conversion to insurance of share accounts under the federal share insurance program, or merger into a federally insured credit union, or liquidation, as applicable; or (b) December 31, 1998.

(3) If a member whose application for insurance of share accounts is approved by the national credit union administration fails to complete the insurance conversion in the time allowed by the national credit union administration, the failure will constitute an unsafe and unsound condition or practice that seriously jeopardizes the interests of the member's depositors and shareholders. The failure shall constitute grounds for the director to issue a temporary order under RCW 31.12.595 requiring the member to complete the insurance conversion and to take such other action as the director deems necessary, and shall constitute grounds for the director to issue a notice of charges under RCW 31.12.585. The authority granted to the director under this subsection may be exercised only after January 1, 1998.

(4) In addition to the action authorized in subsection (3) of this section, if a member fails to obtain federal share insurance, merge into a federally insured credit union, or liquidate by December 31, 1998, the director may appoint a liquidating agent, conservator, or receiver for ~~((the involuntary liquidation of))~~ the member under ~~((RCW 31.12.675 and 31.12.685))~~ chapter 31.12 RCW as if the member were insolvent, unless the member is insured or guaranteed by an interim share insurance or guaranty program approved by the director under section 7 of this act.

(5) Members that obtain share insurance under the federal share insurance program or merge with a credit union insured under the federal share insurance program shall continue to maintain their contingency reserve under RCW 31.12A.050, and capital reserve required by the association, and shall continue to be liable for assessments under RCW 31.12A.090, as if they were members, until

December 31, 1998. The amount of these reserves is based on the member's guaranteeable outstanding share and deposit balances as of December 31st of the year prior to the conversion or merger, as appropriate.

(6) The contingency and capital reserve required by the association shall be included as capital for determining composite capital adequacy, asset quality, management, and earnings and liquidity ratings by regulatory authorities.

**NEW SECTION. Sec. 2.** A new section is added to chapter 31.12A RCW to read as follows:

(1) Definition. As used in this chapter, "qualified former member" means a member as of December 31, 1995.

(2) Dissolution—Liquidation. The association shall dissolve effective December 31, 1998, and be fully liquidated by December 31, 2000, in accordance with a written plan to be adopted by the association's board of directors and approved by the director.

(3) Effect of dissolution. (a) During the period of liquidation, the association shall continue its existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(i) Collecting its assets;

(ii) Converting to cash its properties that will not be distributed in kind;

(iii) Discharging or making provision for discharging its debts, liabilities, and obligations; and

(iv) Distributing or making provision for the distribution of its property and assets.

(b) After discharging or making provision for discharging all debts, liabilities, and obligations, including but not limited to payment or provision for payment of all contracted assistance or guarantees, any remaining property and assets of the association, including but not limited to funds representing the capital reserves maintained by qualified former members or their successors, shall be distributed pro rata to qualified former members of the association or their successors. The pro rata distribution shall be based on guaranteeable outstanding share and deposit balances of qualified former members as of December 31, 1995, except to the extent any contracted assistance or guarantees with a qualified former member or its successor expressly provides otherwise.

(4) Not affected by dissolution. The association's dissolution does not:

(a) Transfer title to its property;

(b) Prevent transfer of its assets;

(c) Subject its directors or officers to standards of conduct other than those prescribed in this chapter;

(d) Change quorum or voting requirements for its board of directors or member credit unions; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

(e) Prevent commencement of a proceeding by or against it in its name; or

(f) Abate or suspend proceedings pending by or against it or to which it is a party as agent or otherwise on the effective date of dissolution.

(5) This section expires December 31, 2000.

**NEW SECTION.** Sec. 3. A new section is added to chapter 31.12A RCW to read as follows:

(1) Notice to creditors—Manner. The association shall within thirty days after the effective date of dissolution give a notice to the association's creditors informing them of the dissolution and requiring all those with claims against the association to serve the claim on the association within one hundred twenty days after the date of the first publication of the notice, known and referred to as the one hundred twenty-day limitation period. This notice shall be given as follows:

(a) The association will give actual notice, as provided in subsection (3) of this section, to the creditors that it knows of and to those creditors who become known to the association within the one hundred twenty-day limitation period; and

(b) The association will cause the notice to be published once in each week for three successive weeks in a legal newspaper of general circulation in the county in which the association's principal place of business is located.

Except as otherwise provided in subsection (3) of this section, any claim not filed within the one hundred twenty-day limitation period is forever barred, if not already barred by any otherwise applicable statute of limitations.

(2) Known and ascertainable creditors. The association shall exercise due diligence within the one hundred twenty-day limitation period to discover reasonably ascertainable creditors of the association. The association will have exercised due diligence in ascertaining creditors upon (a) conducting, within the one hundred twenty-day limitation period, a reasonable review of the association's books, records, accounts, resolutions, minutes, and correspondence, including correspondence received after the effective date of dissolution, and financial records, including checkbooks, bank statements, etc., that are in the association's possession or are reasonably available to it, and (b) having made reasonable inquiry of the association's directors, officers, employees, and agents regarding claimants. If the association conducts the review and makes the inquiry, it is presumed to have exercised reasonable diligence to ascertain creditors of the association and creditors not ascertained in the review or in an inquiry are presumed not reasonably ascertainable. These presumptions may be rebutted only by clear, cogent, and convincing evidence. In any proceeding against the association involving a late claim, the association may, in addition to any other methods of proof available under the rules of evidence, prove the review and inquiry by filing an affidavit or declaration to that effect in the proceeding.

(3) Notice to creditors—Time limits. The actual notice described in subsection (1)(a) of this section, as to creditors known and those becoming known to the association within the one hundred twenty-day limitation period, shall be given to the creditors by personal service or regular first class mail, addressed to the creditor's last known address, postage prepaid. The actual notice shall be given before the later of the expiration of the one hundred twenty-day limitation period or thirty days after any creditor became known to the association within

the one hundred twenty-day limitation period. Any known creditor is barred unless the creditor has filed a claim, as otherwise provided in this section, within the one hundred twenty-day limitation period or within thirty days following the date of actual notice to that creditor, whichever is later. If notice is given by mail, the date of mailing shall be the date of notice.

(4) Claims against the association—Time limits. Whether or not notice under subsection (1) of this section has been given or should have been given, any person having a claim against the association who has not filed a claim within twelve months from the effective date of the association's dissolution shall be forever barred from making a claim against the association, or commencing an action against the association, if the claim or action is not already barred by any otherwise applicable statute of limitations. However, the twelve-month limitation does not apply to any claims where the association has not given the actual notice described in subsection (1) of this section and during the twelve-month period following the effective date of the association's dissolution, partial performance has been made on the obligation underlying the claim. An otherwise applicable statute of limitations applies without regard to the tolling provisions of RCW 4.16.190. Any claim filed within twelve months from the effective date of the association's dissolution and not otherwise barred under this chapter shall be made in the form and manner provided under subsection (6) of this section, as if the notice under subsection (1) of this section had been given.

(5) Deposit with state treasurer. Association assets that should be transferred to a creditor or claimant of the association who cannot be found or who is not competent to receive them may be reduced to cash and deposited with the state treasurer, and if the creditor or claimant furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay that person or that person's representative that amount.

(6) Notice—Form. Notice under RCW 31.12A.—(1) (subsection (1) of this section) shall be in substantially the following form:

Washington Credit Union Share Guaranty Association (hereafter referred to as WCUSGA) has been dissolved by section 2 of this act. The effective date of dissolution is December 31, 1998. Persons having claims against WCUSGA must, prior to the time such claims would be barred by any otherwise applicable statute of limitations, serve their claims on WCUSGA at the address stated below within one hundred twenty days after the date of first publication of this notice or, except under those provisions included in RCW 31.12A.—(3) (subsection 3 of this section), the claim will be forever barred. Claims submitted must contain the information required below.

DATE OF FIRST PUBLICATION: .....

WCUSGA ADDRESS: (Here designate WCUSGA's address for notice purposes)

## INFORMATION REQUIRED IN CLAIMS:

1. The name and address of the claimant;
2. The name, business address (if different from that of the claimant), and nature of authority of any person signing the claim on behalf of the claimant;
3. A written statement of the facts or circumstances constituting the basis upon which the claim is submitted;
4. The amount of the claim; and
5. Whether the claim is secured, unliquidated or contingent, or not yet due; the nature of the security; the nature of any uncertainty; and the due date of the claim: *Provided however*, That failure to describe correctly the security, nature of any uncertainty, or the due date of a claim not yet due, if such failure is not substantially misleading, does not invalidate the claim.

(7) Allowance or rejection of claims—Time limitations for rejection—Notification of rejection—Requirements—Compromise of claim. The association may accept claims, reject claims, or accept claims in part and reject them in part.

(a) If the association rejects a claim, in whole or in part, it shall notify the claimant of the rejection. If the rejection is for part of the claim, the notification shall state the amount of the claim rejected and the amount of the claim accepted. The notification shall be by certified mail, postage prepaid, addressed to the claimant at the claimant's address stated in the claim; if a person other than the claimant signed the claim for or on behalf of the claimant, and that person's business address as stated in the claim is different from that of the claimant, notification of rejection shall also be made by certified mail, postage prepaid, upon that person; the date of the postmark is the date of notification. The notification of rejection shall advise the claimant, and the person making claim on his, her, or its behalf, if any, that the claimant must bring suit in the proper court against the association within thirty days after notification of rejection or before expiration of the time for serving and filing claims against the association, whichever period is longer, and that otherwise the claim will be forever barred.

(b) The association may, either before or after rejection of any claim, compromise the claim, whether due or not, absolute or contingent, or liquidated or unliquidated, if it appears to the association that such a compromise is in its best interests.

(8) Effect of acceptance. Every claim that has been accepted by the association shall be ranked among the association's acknowledged debts to be paid in the course of liquidation.

(9) Suit on rejected claim. When a claim is rejected by the association, the holder must bring suit in the proper court against the association within thirty days after notification of the rejection or before expiration of the time for serving and filing claims against the association, whichever period is longer, otherwise the claim is forever barred.

(10) Outlawed claims. No claim that is barred by the statutes of limitation shall be accepted by the association or by a court.

(11) Claims must be presented. A holder of any claim against the association shall not maintain an action thereon unless the claim has been first presented as provided in this chapter.

(12) Partial acceptance of claim—Costs. Whenever any claim is presented to the association and a part thereof is accepted, as reflected in the association's notice of rejection, and if the claimant rejects the amount so offered by the association in satisfaction of the claim, the claimant shall recover no costs in any action brought against the association unless the claimant's recovery, exclusive of interest and costs, is greater than the amount accepted by the association.

(13) Judgment against association—Payment. If any judgment has been rendered against the association prior to the effective date of its dissolution, no execution shall issue thereon after the effective date of its dissolution. The claim shall be presented to the association as any other claim, but need not be supported by the information otherwise required to be included in creditors' claims. If the claim is justly due and unsatisfied, it shall be paid in due course of liquidation. If there is a lien on any property of the association, that property may be sold for the satisfaction of the lien, and the officer making the sale shall account to the association for any surplus.

(14) This section expires December 31, 2000.

**NEW SECTION. Sec. 4.** A new section is added to chapter 31.12A RCW to read as follows:

(1) After the dissolution and liquidation of the association have been completed in accordance with this chapter, an officer of the association shall execute articles of dissolution and file the articles with the director. The articles of dissolution shall set forth:

- (a) The name of the association;
- (b) The approved plan for the dissolution of the association;
- (c) That all debts, liabilities, and obligations of the association have been paid and discharged or that adequate provision has been made in accordance with this chapter;
- (d) That all the remaining property and assets of the association have been transferred, conveyed, or distributed, or that adequate provision has been made in accordance with this chapter;



(e) That there are no suits pending against the association in any court or, if any suits are pending against it, that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered; and

(f) That a copy of a revenue clearance certificate issued under chapter 82.32 RCW, if applicable, is included.

Upon the filing of the articles of dissolution with the director, the dissolution and liquidation of the association shall be deemed complete.

(2) This section expires December 31, 2000.

**Sec. 5.** RCW 31.12.407 and 1996 c 5 s 5 are each amended to read as follows:

Credit unions must be insured by the federal share insurance program under the national credit union administration, or be insured or guaranteed by an interim share insurance or guaranty program approved by the director under section 7 of this act, on or before December 31, 1998.

**Sec. 6.** RCW 31.12.408 and 1996 c 5 s 6 are each amended to read as follows:

(1) After December 31, 1998, credit unions must be insured under the federal share insurance program or an equivalent share insurance program as defined in this section, or an interim share insurance or guaranty program approved by the director under section 7 of this act. For the purposes of this section an equivalent share insurance program is a program that: (a) Holds reserves proportionately equal to the federal share insurance program; (b) maintains adequate reserves and access to additional sources of funds through replenishment features, reinsurance, or other sources of funds; and (c) has share insurance contracts that reflect a national geographic diversity.

(2) Before any credit union may insure its share deposits with a share insurance program other than (a) the federal share insurance program or (b) an interim share insurance or guaranty program approved under section 7 of this act, the director must make a finding that the alternative share insurance program meets the standards set forth in this section, following a public hearing and a report on the basis for such finding to the appropriate standing committees of the legislature. All such findings shall be made before December 1st of any year and shall not take effect until the end of the regular legislative session of the following year.

(3) Any alternative share insurance program approved under this section shall be reviewed annually by the director to determine whether the program currently meets the standards in this section. The director shall prepare a written report of his or her findings including supporting analysis and forward the report to the appropriate standing committees of the legislature. If the director finds that the alternative share insurance program does not currently meet the standards of this section the director shall notify all credit unions that insure their shares under the alternative share insurance program, and shall include notice of a public hearing for the purpose of receiving comment on the director's finding. Following the

hearing the director may either rescind his or her finding or reaffirm the finding that the alternative share insurance program does not meet the standards in this section. If the finding is reaffirmed, the director shall order all credit unions whose shares are insured with the alternative share insurance program to file, immediately, an application with the national credit union administration to convert to the federal share insurance program.

**NEW SECTION.** Sec. 7. A new section is added to chapter 31.12 RCW to read as follows:

(1) A credit union with a composite capital adequacy, asset quality, management, earnings, and liquidity rating of one or two, which has filed a completed application for insurance of share accounts with the national credit union administration in compliance with RCW 31.12A.007(1), and which has not been approved for such insurance by September 30, 1998, may obtain a form of interim share insurance or guaranty substantially similar to the coverage of the federal share insurance program, with the prior approval of the director, for the period from December 31, 1998, through July 1, 2001. An interim share insurance or guaranty program approved by the director under this section is not subject to RCW 31.12.408.

(2) If a credit union insured or guaranteed by an interim share insurance or guaranty program approved by the director under this section fails to obtain federal share insurance, merge into a federally insured credit union, or liquidate by July 1, 2001, or fails to obtain insurance under an equivalent share insurance program under RCW 31.12.408 by July 1, 2001, the director may appoint a liquidating agent, conservator, or receiver for the credit union under this chapter as if the credit union were insolvent.

(3) This section expires September 1, 2001.

**NEW SECTION.** Sec. 8. Section 1 of this act expires December 31, 2000.

**NEW SECTION.** Sec. 9. Sections 5 and 6 of this act expire July 1, 2001.

Passed the Senate March 7, 1998.

Passed the House February 27, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.

## CHAPTER 123

[Substitute Senate Bill 6358]

### PIPELINE FACILITIES—REGULATION BY UTILITIES AND TRANSPORTATION COMMISSION

AN ACT Relating to utilities and transportation commission intrastate pipeline safety jurisdiction and penalties; adding a new section to chapter 81.88 RCW; and prescribing penalties.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 81.88 RCW to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Pipeline company" means a person or entity constructing, owning, or operating an intrastate pipeline for transporting hazardous liquid, whether or not such a person or entity is a public service company otherwise regulated by the commission. For the purposes of this section, a pipeline company does not include: (i) Distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail; or (ii) excavation contractors or other contractors that contract with a pipeline company.

(b) "Hazardous liquid" means: (i) Petroleum, petroleum products, or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195 in effect March 1, 1998; and (ii) carbon dioxide. The commission by rule may incorporate by reference other substances designated as hazardous by the secretary of transportation under 49 U.S.C. Sec. 60101(a)(4).

(2) The commission shall adopt by rule intrastate pipeline safety standards for pipeline transportation and pipeline facilities that: (a) Apply to pipeline companies transporting hazardous liquids; (b) cover the design, construction, and operation of pipelines transporting hazardous liquids; and (c) require pipeline companies to design, construct, and maintain their pipeline facilities so they are safe and efficient.

(3) A person, officer, agent, or employee of a pipeline company who, as an individual or acting as an officer, agent, or employee of such a company, violates or fails to comply with this section or a rule adopted under this section, or who procures, aids, or abets another person or entity in the violation of or noncompliance with this section or a rule adopted under this section, is guilty of a gross misdemeanor.

(4)(a) A pipeline company, or any person, officer, agent, or employee of a pipeline company that violates a provision of this section, or a rule adopted under this section, is subject to a civil penalty to be assessed by the commission.

(b) The commission shall adopt rules: (i) Setting penalty amounts, but may not exceed the penalties specified in the federal pipeline safety laws, 49 U.S.C. Sec. 60101 et seq.; (ii) establishing procedures for mitigating penalties assessed; and (iii) incorporating by reference other substances designated as hazardous by the secretary of transportation under 49 U.S.C. Sec. 60101(a)(4).

(c) In determining the amount of the penalty, the commission shall consider: (i) The appropriateness of the penalty in relation to the position of the person charged with the violation; (ii) the gravity of the violation; and (iii) the good faith of the person or company charged in attempting to achieve compliance after notification of the violation.

(d) The amount of the penalty may be recovered in a civil action in the superior court of Thurston county or of some other county in which the violator may do business. In all actions for recovery, the rules of evidence shall be the same as in ordinary civil actions. All penalties recovered under this section must be paid into the state treasury and credited to the public service revolving fund.

(5) Nothing in this section duplicates the authority of the energy facility site evaluation council under chapter 80.50 RCW.

Passed the Senate March 7, 1998.

Passed the House March 4, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.

## CHAPTER 124

[Senate Bill 6380]

### MOBILE HOME RELOCATION ASSISTANCE

AN ACT Relating to mobile home relocation assistance; amending RCW 59.21.010, 59.21.021, 59.21.025, 59.21.040, 59.21.050, 43.63B.010, and 43.63B.060; adding a new section to chapter 43.63B RCW; and repealing RCW 59.21.015.

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

**Sec. 1.** RCW 59.21.010 and 1995 c 122 s 3 are each amended to read as follows:

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

(1) "Director" means the director of the department of community, trade, and economic development.

(2) "Department" means the department of community, trade, and economic development.

(3) "Fund" means the mobile home park relocation fund established under RCW 59.21.050.

(4) "Mobile home park" or "park" means real property that is rented or held out for rent to others for the placement of two or more mobile homes for the primary purpose of production of income, except where the real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy.

(5) "Landlord" or "park-owner" means the owner of the mobile home park that is being closed at the time relocation assistance is provided.

(6) "Relocate" means to remove the mobile home from the mobile home park being closed.

(7) "Relocation assistance" means the monetary assistance provided under ((RCW 59.21.020)) this chapter.

**Sec. 2.** RCW 59.21.021 and 1995 c 122 s 5 are each amended to read as follows:

(1) If a mobile home park is closed or converted to another use after December 31, 1995, eligible tenants shall be entitled to assistance on a first-come, first-serve basis. Payments shall be made upon the department's verification of eligibility, subject to the availability of remaining funds ((~~remaining after the distribution under RCW 59.21.015~~)).

(2) Assistance for closures occurring after December 31, 1995, is limited to persons who maintain ownership of and relocate their mobile home.

(3) ~~((Except under subsection (4) of this section, assistance shall be subject to the levels set forth in RCW 59.21.015(2).))~~ Persons who maintained ownership of and relocated their mobile homes are entitled to up to seven thousand dollars for a double-wide home and up to three thousand five hundred dollars for a single-wide home.

(4) Any organization may apply to receive funds from the mobile home park relocation fund, for use in combination with funds from public or private sources, toward relocation of tenants eligible under this section. Funds received from the mobile home park relocation fund shall only be used for relocation assistance.

**Sec. 3.** RCW 59.21.025 and 1995 c 122 s 6 are each amended to read as follows:

(1) If financial assistance for relocation is obtained from sources other than the mobile home park relocation fund established under this chapter, then the relocation assistance provided to any person under this chapter shall be reduced as necessary to ensure that no person receives from all sources combined more than: ~~((+)) (a) That person's actual cost of relocation; or ((2) the amounts provided under RCW 59.21.015(3), whichever applies)) (b) seven thousand dollars for a double-wide mobile home and three thousand five hundred dollars for a single-wide mobile home.~~

(2) When a person receives financial assistance for relocation from a source other than the mobile home park relocation assistance fund, then the assistance received from the fund will be the difference between the maximum amount to which a person is entitled under RCW 59.21.021(3) and the amount of assistance received from the outside source.

(3) If the amount of assistance received from an outside source exceeds the maximum amounts of assistance to which a person is entitled under RCW 59.21.021(3), then that person will not receive any assistance from the mobile home park relocation assistance fund.

**Sec. 4.** RCW 59.21.040 and 1995 c 122 s 8 are each amended to read as follows:

A tenant is not entitled to relocation assistance under this chapter if: (1) The tenant has given notice to the landlord of his or her intent to vacate the park and terminate the tenancy before any written notice of closure pursuant to RCW 59.20.080(1)(e) has been given~~(-or)~~; (2) the tenant purchased a mobile home already situated in the park or moved a mobile home into the park after a written notice of closure pursuant to RCW 59.20.090 has been given and the person received actual prior notice of the change or closure; or (3) the tenant receives assistance from an outside source that exceeds the maximum amounts of assistance to which a person is entitled under RCW 59.21.021(3). However, no tenant may be denied relocation assistance under subsection (1) of this section if the tenant has remained on the premises and continued paying rent for a period

of ~~((as set))~~ at least six months after giving notice of intent to vacate and before receiving formal notice of a closure or change of use.

Sec. 5. RCW 59.21.050 and 1995 c 122 s 9 are each amended to read as follows:

(1) The existence of the mobile home park relocation fund in the custody of the state treasurer is affirmed. Expenditures from the fund may be used only for relocation assistance awarded under ~~((RCW 59.21.015 through 59.21.025))~~ this chapter. Only the director or the director's designee may authorize expenditures from the fund. All relocation payments to tenants shall be made from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(2) A park tenant is eligible for assistance under ~~((RCW 59.21.015))~~ this chapter only after an application is submitted by that tenant or an organization acting on the tenant's account under RCW 59.21.021(4) on a form approved by the director which shall include:

(a) For those persons who maintained ownership of and relocated their homes: (i) A copy of the notice from the park-owner, or other adequate proof, that the tenancy is terminated due to closure of the park or its conversion to another use; (ii) a copy of the rental agreement then in force, or other proof that the applicant was a tenant at the time of notice of closure; (iii) a copy of the contract for relocating the home which includes the date of relocation, or other proof of actual relocation expenses incurred on a date certain; and (iv) a statement of any other available assistance;

(b) For those persons who sold their homes and incurred no relocation expenses: (i) A copy of the notice from the park-owner, or other adequate proof, that the tenancy is terminated due to closure of the park or its conversion to another use; (ii) a copy of the rental agreement then in force, or other proof that the applicant was a tenant at the time of notice of closure; and (iii) a copy of the record of title transfer issued by the department of licensing when the tenant sold the home rather than relocate it due to park closure or conversion.

Sec. 6. RCW 43.63B.010 and 1994 c 284 s 15 are each amended to read as follows:

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

(1) "Authorized representative" means an employee of a state agency, city, or county acting on behalf of the department.

(2) "Certified manufactured home installer" means a person who is in the business of installing mobile or manufactured homes and who has been issued a certificate by the department as provided in this chapter.

(3) "Department" means the department of community, trade, and economic development.

(4) "Director" means the director of community, trade, and economic development.

(5) "Manufactured home" means a single-family dwelling built in accordance with the department of housing and urban development manufactured home construction and safety standards act, which is a national, preemptive building code.

(6) "Mobile or manufactured home installation" means all on-site work necessary for the installation of a manufactured home, including:

(a) Construction of the foundation system;

(b) Installation of the support piers and earthquake resistant bracing system;

(c) Required connection to foundation system and support piers;

(d) Skirting;

(e) Connections to the on-site water and sewer systems that are necessary for the normal operation of the home; and

(f) Extension of the pressure relief valve for the water heater.

(7) "Manufactured home standards" means the manufactured home construction and safety standards as promulgated by the United States department of housing and urban development (HUD).

(8) "Mobile home" means a factory-built dwelling built prior to June 15, 1976, to standards other than the HUD code, and acceptable under applicable state codes in effect at the time of construction or introduction of the home into the state. Mobile homes have not been built since introduction of the HUD manufactured home construction and safety standards act.

(9) "Training course" means the education program administered by the department, or the education course administered by an approved educational provider, as a prerequisite to taking the examination for certification.

(10) "Approved educational provider" means an organization approved by the department to provide education and training of manufactured home installers and local inspectors.

**NEW SECTION. Sec. 7.** A new section is added to chapter 43.63B RCW to read as follows:

The department shall adopt rules to establish and administer a process of approving educational providers as an alternative to the department training course for installers and local inspectors.

**Sec. 8.** RCW 43.63B.060 and 1994 c 284 s 20 are each amended to read as follows:

Any local government mobile or manufactured home installation application and permit shall state either the name and registration number of the contractor or licensed manufactured home dealer or the certification identification number of the certified manufactured home installer supervising such installation. A local government may not issue ~~((a permit to install))~~ final approval for the installation of a manufactured home unless~~((1) The installer submits a copy of the certificate of manufactured home installation to the local government; or (2) work is being performed that does not require a certified installer. When work must be performed by a certified manufactured home installer, no work may commence~~

until)) the certified installer or the installer's agent has posted (~~(or otherwise made available, with the inspection record card)~~) at the set-up site(~~(, a copy of the certified)~~) the manufactured home installer's ((ertificate of)) certification number and has identified the work being performed on the manufactured home installation on a form prescribed by the department.

NEW SECTION. Sec. 9. RCW 59.21.015 and 1995 c 122 s 4 are each repealed.

Passed the Senate March 7, 1998.

Passed the House March 4, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.

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## CHAPTER 125

[Substitute Senate Bill 6425]

### SUMMARIZING MEMORANDUMS OF RULE-MAKING HEARINGS— CLARIFICATION OF RESPONSIBILITIES

AN ACT Relating to legal authority of agency heads; and amending RCW 34.05.325.

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

Sec. 1. RCW 34.05.325 and 1995 c 403 s 304 are each amended to read as follows:

(1) The agency shall make a good faith effort to insure that the information on the proposed rule published pursuant to RCW 34.05.320 accurately reflects the rule to be presented and considered at the oral hearing on the rule. Written comment about a proposed rule, including supporting data, shall be accepted by an agency if received no later than the time and date specified in the notice, or such later time and date established at the rule-making hearing.

(2) The agency shall provide an opportunity for oral comment to be received by the agency in a rule-making hearing.

(3) If the agency possesses equipment capable of receiving telefacsimile transmissions or recorded telephonic communications, the agency may provide in its notice of hearing filed under RCW 34.05.320 that interested parties may comment on proposed rules by these means. If the agency chooses to receive comments by these means, the notice of hearing shall provide instructions for making such comments, including, but not limited to, appropriate telephone numbers to be used; the date and time by which comments must be received; required methods to verify the receipt and authenticity of the comments; and any limitations on the number of pages for telefacsimile transmission comments and on the minutes of tape recorded comments. The agency shall accept comments received by these means for inclusion in the official record if the comments are made in accordance with the agency's instructions.

(4) The agency head, a member of the agency head, or a presiding officer designated by the agency head shall preside at the rule-making hearing. Rule-



making hearings shall be open to the public. The agency shall cause a record to be made of the hearing by stenographic, mechanical, or electronic means. ~~((Unless the agency head presides or is present at substantially all the hearings))~~ Regardless of whether the agency head has delegated rule-making authority, the presiding official shall prepare a memorandum for consideration by the agency head, summarizing the contents of the presentations made at the rule-making hearing, unless the agency head presided or was present at substantially all of the hearings. The summarizing memorandum is a public document and shall be made available to any person in accordance with chapter 42.17 RCW.

(5) Rule-making hearings are legislative in character and shall be reasonably conducted by the presiding official to afford interested persons the opportunity to present comment. Rule-making hearings may be continued to a later time and place established on the record without publication of further notice under RCW 34.05.320.

(6)(a) Before it files an adopted rule with the code reviser, an agency shall prepare a concise explanatory statement of the rule:

- (i) Identifying the agency's reasons for adopting the rule;
- (ii) Describing differences between the text of the proposed rule as published in the register and the text of the rule as adopted, other than editing changes, stating the reasons for differences; and
- (iii) Summarizing all comments received regarding the proposed rule, and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.

(b) The agency shall provide the concise explanatory statement to any person upon request or from whom the agency received comment.

Passed the Senate February 13, 1998.

Passed the House March 4, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.

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## CHAPTER 126

[Senate Bill 6539]

### LIQUOR LICENSE DESIGNATIONS—TECHNICAL CHANGES

AN ACT Relating to technical changes regarding designations for liquor licenses; amending RCW 66.20.010, 66.24.244, 66.24.320, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.28.010, 66.28.040, 66.28.200, 66.44.310, 66.98.060, and 82.08.150; reenacting and amending RCW 66.24.010; and providing an effective date.

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

**Sec. 1.** RCW 66.20.010 and 1997 c 321 s 43 are each amended to read as follows:

Upon application in the prescribed form being made to any employee authorized by the board to issue permits, accompanied by payment of the prescribed fee, and upon the employee being satisfied that the applicant should

be granted a permit under this title, the employee shall issue to the applicant under such regulations and at such fee as may be prescribed by the board a permit of the class applied for, as follows:

(1) Where the application is for a special permit by a physician or dentist, or by any person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, a special liquor purchase permit;

(2) Where the application is for a special permit by a person engaged within the state in mechanical or manufacturing business or in scientific pursuits requiring alcohol for use therein, or by any private individual, a special permit to purchase alcohol for the purpose named in the permit;

(3) Where the application is for a special permit to consume liquor at a banquet, at a specified date and place, a special permit to purchase liquor for consumption at such banquet, to such applicants as may be fixed by the board;

(4) Where the application is for a special permit to consume liquor on the premises of a business not licensed under this title, a special permit to purchase liquor for consumption thereon for such periods of time and to such applicants as may be fixed by the board;

(5) Where the application is for a special permit by a manufacturer to import or purchase within the state alcohol, malt, and other materials containing alcohol to be used in the manufacture of liquor, or other products, a special permit;

(6) Where the application is for a special permit by a person operating a drug store to purchase liquor at retail prices only, to be thereafter sold by such person on the prescription of a physician, a special liquor purchase permit;

(7) Where the application is for a special permit by an authorized representative of a military installation operated by or for any of the armed forces within the geographical boundaries of the state of Washington, a special permit to purchase liquor for use on such military installation at prices to be fixed by the board;

(8) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to serve liquor without charge to delegates and guests at a convention of a trade association composed of licensees of the board, when the said liquor is served in a hospitality room or from a booth in a board-approved suppliers' display room at the convention, and when the liquor so served is for consumption in the said hospitality room or display room during the convention, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board or a ~~((full-service))~~ spirits, beer, and wine restaurant licensee and any such beer and wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(9) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate liquor for a reception, breakfast, luncheon, or dinner for delegates and guests at a convention of a trade association composed of licensees of the board, when the liquor so donated is for consumption at the said reception, breakfast, luncheon, or dinner during the

convention, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board or a ~~((class-H))~~ spirits, beer, and wine restaurant licensee and any such beer and wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(10) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate and/or serve liquor without charge to delegates and guests at an international trade fair, show, or exposition held under the auspices of a federal, state, or local governmental entity or organized and promoted by a nonprofit organization, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board and any such beer or wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(11) Where the application is for an annual special permit by a person operating a bed and breakfast lodging facility to donate or serve wine or beer without charge to overnight guests of the facility if the wine or beer is for consumption on the premises of the facility. "Bed and breakfast lodging facility," as used in this subsection, means a hotel or similar facility offering from one to eight lodging units and breakfast to travelers and guests.

**Sec. 2.** RCW 66.24.010 and 1997 c 321 s 1 and 1997 c 58 s 873 are each reenacted and amended to read as follows:

(1) Every license shall be issued in the name of the applicant, and the holder thereof shall not allow any other person to use the license.

(2) For the purpose of considering any application for a license, the board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. For the purpose of reviewing any application for a license and for considering the denial, suspension or revocation of any license, the liquor control board may consider any prior criminal conduct of the applicant and the provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. The board may, in its discretion, grant or refuse the license applied for. Authority to approve an uncontested or unopposed license may be granted by the board to any staff member the board designates in writing. Conditions for granting such authority shall be adopted by rule. No retail license of any kind may be issued to:

(a) A person who has not resided in the state for at least one month prior to making application, except in cases of licenses issued to dining places on railroads, boats, or aircraft;

(b) A copartnership, unless all of the members thereof are qualified to obtain a license, as provided in this section;

(c) A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;

(d) A corporation or a limited liability company, unless it was created under the laws of the state of Washington or holds a certificate of authority to transact business in the state of Washington.

(3)(a) The board may, in its discretion, subject to the provisions of RCW 66.08.150, suspend or cancel any license; and all rights of the licensee to keep or sell liquor thereunder shall be suspended or terminated, as the case may be.

(b) The board shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order (~~or a residential or visitation order~~). If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(c) The board may request the appointment of administrative law judges under chapter 34.12 RCW who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules and regulations as the board may adopt.

(d) Witnesses shall be allowed fees and mileage each way to and from any such inquiry, investigation, hearing, or proceeding at the rate authorized by RCW 34.05.446, as now or hereafter amended. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

(e) In case of disobedience of any person to comply with the order of the board or a subpoena issued by the board, or any of its members, or administrative law judges, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or administrative law judge, shall compel obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(4) Upon receipt of notice of the suspension or cancellation of a license, the licensee shall forthwith deliver up the license to the board. Where the license has been suspended only, the board shall return the license to the licensee at the expiration or termination of the period of suspension. The board shall notify all vendors in the city or place where the licensee has its premises of the suspension or cancellation of the license; and no employee may allow or cause any liquor to be delivered to or for any person at the premises of that licensee.

(5)(a) At the time of the original issuance of a (~~full-service~~) spirits, beer, and wine restaurant license, the board shall prorate the license fee charged to the new licensee according to the number of calendar quarters, or portion thereof, remaining until the first renewal of that license is required.

(b) Unless sooner canceled, every license issued by the board shall expire at midnight of the thirtieth day of June of the fiscal year for which it was issued. However, if the board deems it feasible and desirable to do so, it may establish,

by rule pursuant to chapter 34.05 RCW, a system for staggering the annual renewal dates for any and all licenses authorized by this chapter. If such a system of staggered annual renewal dates is established by the board, the license fees provided by this chapter shall be appropriately prorated during the first year that the system is in effect.

(6) Every license issued under this section shall be subject to all conditions and restrictions imposed by this title or by the regulations in force from time to time. All conditions and restrictions imposed by the board in the issuance of an individual license shall be listed on the face of the individual license along with the trade name, address, and expiration date.

(7) Every licensee shall post and keep posted its license, or licenses, in a conspicuous place on the premises.

(8) Before the board shall issue a license to an applicant it shall give notice of such application to the chief executive officer of the incorporated city or town, if the application be for a license within an incorporated city or town, or to the county legislative authority, if the application be for a license outside the boundaries of incorporated cities or towns; and such incorporated city or town, through the official or employee selected by it, or the county legislative authority or the official or employee selected by it, shall have the right to file with the board within twenty days after date of transmittal of such notice, written objections against the applicant or against the premises for which the license is asked, and shall include with such objections a statement of all facts upon which such objections are based, and in case written objections are filed, may request and the liquor control board may in its discretion hold a formal hearing subject to the applicable provisions of Title 34 RCW. Upon the granting of a license under this title the board shall send a duplicate of the license or written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns.

(9) Before the board issues any license to any applicant, it shall give (a) due consideration to the location of the business to be conducted under such license with respect to the proximity of churches, schools, and public institutions and (b) written notice by certified mail of the application to churches, schools, and public institutions within five hundred feet of the premises to be licensed. The board shall issue no beer retailer license for either on-premises or off-premises consumption or wine retailer license for either on-premises or off-premises consumption or ~~((full-service))~~ spirits, beer, and wine restaurant license covering any premises not now licensed, if such premises are within five hundred feet of the premises of any tax-supported public elementary or secondary school measured along the most direct route over or across established public walks, streets, or other public passageway from the outer property line of the school grounds to the nearest public entrance of the premises proposed for license, and if, after receipt by the school or public institution of the notice as provided in this subsection, the board receives written notice, within twenty days after posting

such notice, from an official representative or representatives of the school within five hundred feet of said proposed licensed premises, indicating to the board that there is an objection to the issuance of such license because of proximity to a school. For the purpose of this section, church shall mean a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith. No liquor license may be issued or reissued by the board to any motor sports facility or licensee operating within the motor sports facility unless the motor sports facility enforces a program reasonably calculated to prevent alcohol or alcoholic beverages not purchased within the facility from entering the facility and such program is approved by local law enforcement agencies. It is the intent under this subsection that a retail license shall not be issued by the board where doing so would, in the judgment of the board, adversely affect a private school meeting the requirements for private schools under Title 28A RCW, which school is within five hundred feet of the proposed licensee. The board shall fully consider and give substantial weight to objections filed by private schools. If a license is issued despite the proximity of a private school, the board shall state in a letter addressed to the private school the board's reasons for issuing the license.

(10) The restrictions set forth in subsection (9) of this section shall not prohibit the board from authorizing the assumption of existing licenses now located within the restricted area by other persons or licenses or relocations of existing licensed premises within the restricted area. In no case may the licensed premises be moved closer to a church or school than it was before the assumption or relocation.

(11) Nothing in this section prohibits the board, in its discretion, from issuing a temporary retail or distributor license to an applicant assuming an existing retail or distributor license to continue the operation of the retail or distributor premises during the period the application for the license is pending and when the following conditions exist:

(a) The licensed premises has been operated under a retail or distributor license within ninety days of the date of filing the application for a temporary license;

(b) The retail or distributor license for the premises has been surrendered pursuant to issuance of a temporary operating license;

(c) The applicant for the temporary license has filed with the board an application to assume the retail or distributor license at such premises to himself or herself; and

(d) The application for a temporary license is accompanied by a temporary license fee established by the board by rule.

A temporary license issued by the board under this section shall be for a period not to exceed sixty days. A temporary license may be extended at the discretion of the board for an additional sixty-day period upon payment of an additional fee and upon compliance with all conditions required in this section.

Refusal by the board to issue or extend a temporary license shall not entitle the applicant to request a hearing. A temporary license may be canceled or suspended summarily at any time if the board determines that good cause for cancellation or suspension exists. RCW 66.08.130 and chapter 34.05 RCW shall apply to temporary licenses.

Application for a temporary license shall be on such form as the board shall prescribe. If an application for a temporary license is withdrawn before issuance or is refused by the board, the fee which accompanied such application shall be refunded in full.

**Sec. 3.** RCW 66.24.244 and 1997 c 321 s 12 are each amended to read as follows:

(1) There shall be a license for microbreweries; fee to be one hundred dollars for production of less than sixty thousand barrels of malt liquor per year.

(2) Any microbrewery license under this section may also act as a distributor and/or retailer for beer of its own production. Any microbrewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers.

(3) The board may issue an endorsement to this license allowing for on-premises consumption of beer, wine, or both of other manufacture if purchased from a Washington state-licensed distributor. Each endorsement shall cost two hundred dollars per year, or four hundred dollars per year allowing the sale and service of both beer and wine.

(4) The microbrewer obtaining such endorsement must determine, at the time the endorsement is issued, whether the licensed premises will be operated either as a tavern with persons under twenty-one years of age not allowed as provided for in RCW 66.24.330, or as a (~~limited service~~) beer and/or wine restaurant as described in RCW 66.24.320.

**Sec. 4.** RCW 66.24.320 and 1997 c 321 s 18 are each amended to read as follows:

There shall be a (~~limited service~~) beer and/or wine restaurant license to sell beer or wine, or both, at retail, for consumption on the premises. A patron of the licensee may remove from the premises, recorked or recapped in its original container, any portion of wine that was purchased for consumption with a meal.

(1) The annual fee shall be two hundred dollars for the beer license, two hundred dollars for the wine license, or four hundred dollars for a combination beer and wine license.

(2) The board may issue a caterer's endorsement to this license to allow the licensee to remove from the liquor stocks at the licensed premises, only those types of liquor that are authorized under the on-premises license privileges for sale and service at special occasion locations at a specified date and place not currently licensed by the board. The privilege of selling and serving liquor under the endorsement is limited to members and guests of a society or organization as

defined in RCW 66.24.375. Cost of the endorsement is three hundred fifty dollars.

(a) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(b) If attendance at the function will be limited to members and invited guests of the sponsoring society or organization, the requirement that the society or organization be within the definition of RCW 66.24.375 is waived.

**Sec. 5.** RCW 66.24.400 and 1997 c 321 s 26 are each amended to read as follows:

There shall be a retailer's license, to be known and designated as a ~~((full service))~~ spirits, beer, and wine restaurant license, to sell spirituous liquor by the individual glass, beer, and wine, at retail, for consumption on the premises, including mixed drinks and cocktails compounded or mixed on the premises only: PROVIDED, That a hotel, or club licensed under chapter 70.62 RCW with overnight sleeping accommodations, that is licensed under this section may sell liquor by the bottle to registered guests of the hotel or club for consumption in guest rooms, hospitality rooms, or at banquets in the hotel or club: PROVIDED FURTHER, That a patron of a bona fide hotel, restaurant, or club licensed under this section may remove from the premises recorked or recapped in its original container any portion of wine which was purchased for consumption with a meal, and registered guests who have purchased liquor from the hotel or club by the bottle may remove from the premises any unused portion of such liquor in its original container. Such license may be issued only to bona fide restaurants, hotels and clubs, and to dining, club and buffet cars on passenger trains, and to dining places on passenger boats and airplanes, and to dining places at civic centers with facilities for sports, entertainment, and conventions, and to such other establishments operated and maintained primarily for the benefit of tourists, vacationers and travelers as the board shall determine are qualified to have, and in the discretion of the board should have, a ~~((full-service))~~ spirits, beer, and wine restaurant license under the provisions and limitations of this title.

**Sec. 6.** RCW 66.24.420 and 1997 c 321 s 27 are each amended to read as follows:

(1) The ~~((full-service-restaurant))~~ spirits, beer, and wine restaurant license shall be issued in accordance with the following schedule of annual fees:

(a) The annual fee for a ~~((full-service))~~ spirits, beer, and wine restaurant license shall be graduated according to the dedicated dining area and type of service provided as follows:

|                                     |         |
|-------------------------------------|---------|
| Less than 50% dedicated dining area | \$2,000 |
| 50% or more dedicated dining area   | \$1,600 |
| Service bar only                    | \$1,000 |



(b) The annual fee for ~~((said))~~ the license when issued to any other ~~((full service))~~ spirits, beer, and wine restaurant licensee outside of incorporated cities and towns shall be prorated according to the calendar quarters, or portion thereof, during which the licensee is open for business, except in case of suspension or revocation of the license.

(c) Where the license shall be issued to any corporation, association or person operating a bona fide restaurant in an airport terminal facility providing service to transient passengers with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: PROVIDED, That the holder of a master license for a restaurant in an airport terminal facility shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and such food service shall be available on request in other licensed places on the premises: PROVIDED, FURTHER, That an additional license fee of twenty-five percent of the annual master license fee shall be required for such duplicate licenses.

(d) Where the license shall be issued to any corporation, association, or person operating dining places at a publicly or privately owned civic or convention center with facilities for sports, entertainment, or conventions, or a combination thereof, with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: PROVIDED, That the holder of a master license for a dining place at such a publicly or privately owned civic or convention center shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and food service shall be available on request in other licensed places on the premises: PROVIDED FURTHER, That an additional license fee of ten dollars shall be required for such duplicate licenses.

(e) Where the license shall be issued to any corporation, association or person operating more than one building containing dining places at privately owned facilities which are open to the public and where there is a continuity of ownership of all adjacent property, such license shall be issued upon the payment of an annual fee which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to the additional dining places on the property or, in the case of a ~~((full service))~~ spirits, beer, and wine restaurant licensed hotel, property owned or controlled by leasehold interest by that hotel for use as a conference or convention center or banquet facility open to the general public for special events in the same metropolitan area, at the

discretion of the board and a duplicate license may be issued for each additional place: PROVIDED, That the holder of the master license for the dining place shall not offer alcoholic beverages for sale, service, and consumption at the additional place unless food service is available at both the location of the master license and the duplicate license: PROVIDED FURTHER, That an additional license fee of twenty dollars shall be required for such duplicate licenses.

(2) The board, so far as in its judgment is reasonably possible, shall confine ~~((full-service))~~ spirits, beer, and wine restaurant licenses to the business districts of cities and towns and other communities, and not grant such licenses in residential districts, nor within the immediate vicinity of schools, without being limited in the administration of this subsection to any specific distance requirements.

(3) The board shall have discretion to issue ~~((full-service))~~ spirits, beer, and wine restaurant licenses outside of cities and towns in the state of Washington. The purpose of this subsection is to enable the board, in its discretion, to license in areas outside of cities and towns and other communities, establishments which are operated and maintained primarily for the benefit of tourists, vacationers and travelers, and also golf and country clubs, and common carriers operating dining, club and buffet cars, or boats.

(4) The total number of ~~((full-service))~~ spirits, beer, and wine restaurant licenses issued in the state of Washington by the board, not including ~~((full service))~~ spirits, beer, and wine private club licenses, shall not in the aggregate at any time exceed one license for each fifteen hundred of population in the state, determined according to the yearly population determination developed by the office of financial management pursuant to RCW 43.62.030.

(5) Notwithstanding the provisions of subsection (4) of this section, the board shall refuse a ~~((full-service))~~ spirits, beer, and wine restaurant license to any applicant if in the opinion of the board the ~~((full-service))~~ spirits, beer, and wine restaurant licenses already granted for the particular locality are adequate for the reasonable needs of the community.

(6) The board may issue a caterer's endorsement to this license to allow the licensee to remove the liquor stocks at the licensed premises, for use as liquor for sale and service at special occasion locations at a specified date and place not currently licensed by the board. The privilege of selling and serving liquor under such endorsement is limited to members and guests of a society or organization as defined in RCW 66.24.375. Cost of the endorsement is three hundred fifty dollars.

(a) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(b) If attendance at the function will be limited to members and invited guests of the sponsoring society or organization, the requirement that the society or organization be within the definition of RCW 66.24.375 is waived.

**Sec. 7.** RCW 66.24.425 and 1997 c 321 s 28 are each amended to read as follows:

(1) The board may, in its discretion, issue a ~~((full-service))~~ spirits, beer, and wine restaurant license to a business which qualifies as a "restaurant" as that term is defined in RCW 66.24.410 in all respects except that the business does not serve the general public but, through membership qualification, selectively restricts admission to the business. For purposes of RCW 66.24.400 and 66.24.420, all licenses issued under this section shall be considered ~~((full-service))~~ spirits, beer, and wine restaurant licenses and shall be subject to all requirements, fees, and qualifications in this title, or in rules adopted by the board, as are applicable to ~~((full-service))~~ spirits, beer, and wine restaurant licenses generally except that no service to the general public may be required.

(2) No license shall be issued under this section to a business:

(a) Which shall not have been in continuous operation for at least one year immediately prior to the date of its application; or

(b) Which denies membership or admission to any person because of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical handicap.

**Sec. 8.** RCW 66.24.440 and 1997 c 321 s 29 are each amended to read as follows:

Each ~~((full-service))~~ spirits, beer, and wine restaurant, ~~((full-service))~~ spirits, beer, and wine private club, and sports entertainment facility licensee shall be entitled to purchase any spirituous liquor items salable under such license from the board at a discount of not less than fifteen percent from the retail price fixed by the board, together with all taxes.

**Sec. 9.** RCW 66.24.450 and 1997 c 321 s 30 are each amended to read as follows:

(1) No club shall be entitled to a ~~((full-service))~~ spirits, beer, and wine private club license:

(a) Unless such private club has been in continuous operation for at least one year immediately prior to the date of its application for such license;

(b) Unless the private club premises be constructed and equipped, conducted, managed, and operated to the satisfaction of the board and in accordance with this title and the regulations made thereunder;

(c) Unless the board shall have determined pursuant to any regulations made by it with respect to private clubs, that such private club is a bona fide private club; it being the intent of this section that license shall not be granted to a club which is, or has been, primarily formed or activated to obtain a license to sell liquor, but solely to a bona fide private club, where the sale of liquor is incidental to the main purposes of the private club, as defined in RCW 66.04.010(7).

(2) The annual fee for a ~~((full-service))~~ spirits, beer, and wine private club license, whether inside or outside of an incorporated city or town, is seven hundred twenty dollars per year.

**Sec. 10.** RCW 66.24.455 and 1997 c 321 s 32 are each amended to read as follows:

Subject to approval by the board, holders of beer ~~((and))~~ and/or wine restaurant, tavern, snack bar, ~~((full-service))~~ spirits, beer, and wine restaurant, ~~((full-service))~~ spirits, beer, and wine private club, or beer and wine private club licenses may extend their premises for the sale, service, and consumption of liquor authorized under their respective licenses to the concourse or lane areas in a bowling establishment where the concourse or lane areas are adjacent to the food preparation service facility.

**Sec. 11.** RCW 66.28.010 and 1997 c 321 s 46 are each amended to read as follows:

(1)(a) No manufacturer, importer, or distributor, or person financially interested, directly or indirectly, in such business; whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business; nor shall any manufacturer, importer, or distributor own any of the property upon which such licensed persons conduct their business; nor shall any such licensed person, under any arrangement whatsoever, conduct his or her business upon property in which any manufacturer, importer, or distributor has any interest unless title to that property is owned by a corporation in which a manufacturer has no direct stock ownership and there are no interlocking officers or directors, the retail license is held by an independent concessionaire which is not owned directly or indirectly by the manufacturer or property owner, the sales of liquor are incidental to the primary activity of operating the property as an amphitheater offering live musical and similar live entertainment activities to the public, alcoholic beverages produced by the manufacturer are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation of the retail licensee. Except as provided in subsection (3) of this section, no manufacturer, importer, or distributor shall advance moneys or moneys' worth to a licensed person under an arrangement, nor shall such licensed person receive, under an arrangement, an advance of moneys or moneys' worth. "Person" as used in this section only shall not include those state or federally chartered banks, state or federally chartered savings and loan associations, state or federally chartered mutual savings banks, or institutional investors which are not controlled directly or indirectly by a manufacturer, importer, or distributor as long as the bank, savings and loan association, or institutional investor does not influence or attempt to influence the purchasing practices of the retailer with respect to alcoholic beverages. No manufacturer, importer, or distributor shall be eligible to receive or hold a retail

license under this title, nor shall such manufacturer, importer, or distributor sell at retail any liquor as herein defined.

(b) Nothing in this section shall prohibit a licensed domestic brewery or microbrewery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the brewery premises and nothing in this section shall prohibit a domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine distributor.

(c) Nothing in this section shall prohibit a licensed domestic brewery, microbrewery, domestic winery, or a lessee of a licensed domestic brewer, microbrewery, or domestic winery, from being licensed as a ~~((full-service))~~ spirits, beer, and wine restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a ~~((full-service))~~ spirits, beer, and wine restaurant premises on the property on which the primary manufacturing facility of the licensed domestic brewer, microbrewery, or domestic winery is located or on contiguous property owned by the licensed domestic brewer, microbrewery, or domestic winery as prescribed by rules adopted by the board pursuant to chapter 34.05 RCW.

(2) Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien, or through interlocking directors, or otherwise. Pursuant to rules promulgated by the board in accordance with chapter 34.05 RCW manufacturers, distributors, and importers may perform, and retailers may accept the service of building, rotating and restocking case displays and stock room inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; price case goods of their own brands; and perform such similar normal business services as the board may by regulation prescribe.

(3)(a) This section does not prohibit a manufacturer, importer, or distributor from providing services to a special occasion licensee for: (i) Installation of draft beer dispensing equipment or advertising, (ii) advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, or (iii) a special occasion licensee from receiving any such services as may be provided by a manufacturer, importer, or distributor. Nothing in this section shall prohibit a retail licensee, or any person financially interested, directly or indirectly, in such a retail licensee from having a financial interest, direct or indirect, in a business which provides, for a compensation commensurate in value to the services provided, bottling, canning or other services to a manufacturer, so long as the retail licensee or person interested therein has no direct financial interest in or control of said manufacturer.

(b) A person holding contractual rights to payment from selling a liquor distributor's business and transferring the license shall not be deemed to have a

financial interest under this section if the person (i) lacks any ownership in or control of the distributor, (ii) is not employed by the distributor, and (iii) does not influence or attempt to influence liquor purchases by retail liquor licensees from the distributor.

(c) The board shall adopt such rules as are deemed necessary to carry out the purposes and provisions of subsection (3)(a) of this section in accordance with the administrative procedure act, chapter 34.05 RCW.

(4) A license issued under RCW 66.24.395 does not constitute a retail license for the purposes of this section.

(5) A public house license issued under RCW 66.24.580 does not violate the provisions of this section as to a retailer having an interest directly or indirectly in a liquor-licensed manufacturer.

**Sec. 12.** RCW 66.28.040 and 1997 c 39 s 1 are each amended to read as follows:

Except as permitted by the board under RCW 66.20.010, no (~~brewer, wholesaler,;~~) brewery, distributor, distiller, winery, importer, rectifier, or other manufacturer of liquor shall, within the state, (~~by himself or herself, a clerk, servant, or agent,;~~) give to any person any liquor; but nothing in this section nor in RCW 66.28.010 shall prevent a (~~brewer, wholesaler,;~~) brewery, distributor, winery, distiller, or importer from furnishing samples of beer, wine, or spirituous liquor to authorized licensees for the purpose of negotiating a sale, in accordance with regulations adopted by the liquor control board, provided that the samples are subject to taxes imposed by RCW 66.24.290 and 66.24.210, and in the case of spirituous liquor, any product used for samples must be purchased at retail from the board; nothing in this section shall prevent the furnishing of samples of liquor to the board for the purpose of negotiating the sale of liquor to the state liquor control board; nothing in this section shall prevent a brewery, winery, distillery, or (~~wholesaler,;~~) distributor from furnishing beer, wine, or spirituous liquor for instructional purposes under RCW 66.28.150 and 66.28.155; nothing in this section shall prevent a winery or (~~wholesaler,;~~) distributor from furnishing wine without charge to a not-for-profit group organized and operated solely for the purpose of enology or the study of viticulture which has been in existence for at least six months and any wine so furnished shall be used solely for such educational purposes, provided that the wine furnished shall be subject to the taxes imposed by RCW 66.24.210; nothing in this section shall prevent a brewer from serving beer without charge, on the brewery premises; nothing in this section shall prevent donations of wine for the purposes of RCW 66.12.180; and nothing in this section shall prevent a domestic winery from serving wine without charge, on the winery premises.

**Sec. 13.** RCW 66.28.200 and 1997 c 321 s 38 are each amended to read as follows:

Licensees holding a (~~limited service,;~~) beer and/or wine restaurant or a tavern license in combination with an off-premises beer and wine retailer's license may

sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. Under a special endorsement from the board, a grocery store licensee may sell malt liquor in containers no larger than five and one-half gallons. The sale of any container holding four gallons or more must comply with the provisions of this section and RCW 66.28.210 through 66.28.240. Any person who sells or offers for sale the contents of kegs or other containers containing four gallons or more of malt liquor, or leases kegs or other containers that will hold four gallons of malt liquor, to consumers who are not licensed under chapter 66.24 RCW shall do the following for any transaction involving the container:

(1) Require the purchaser of the malt liquor to sign a declaration and receipt for the keg or other container or beverage in substantially the form provided in RCW 66.28.220;

(2) Require the purchaser to provide one piece of identification pursuant to RCW 66.16.040;

(3) Require the purchaser to sign a sworn statement, under penalty of perjury, that:

(a) The purchaser is of legal age to purchase, possess, or use malt liquor;

(b) The purchaser will not allow any person under the age of twenty-one years to consume the beverage except as provided by RCW 66.44.270;

(c) The purchaser will not remove, obliterate, or allow to be removed or obliterated, the identification required under RCW 66.28.220 to be affixed to the container;

(4) Require the purchaser to state the particular address where the malt liquor will be consumed, or the particular address where the keg or other container will be physically located; and

(5) Require the purchaser to maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without a physical barrier from the keg, during the time that the keg or other container is in the purchaser's possession or control.

**Sec. 14.** RCW 66.44.310 and 1997 c 321 s 53 are each amended to read as follows:

(1) Except as otherwise provided by RCW 66.44.316 and 66.44.350, it shall be a misdemeanor:

(a) To serve or allow to remain in any area classified by the board as off-limits to any person under the age of twenty-one years;

(b) For any person under the age of twenty-one years to enter or remain in any area classified as off-limits to such a person, but persons under twenty-one years of age may pass through a restricted area in a facility holding a spirits, beer, and wine private club (~~full-service~~) license;

(c) For any person under the age of twenty-one years to represent his or her age as being twenty-one or more years for the purpose of purchasing liquor or securing admission to, or remaining in any area classified by the board as off-limits to such a person.

(2) The Washington state liquor control board shall have the power and it shall be its duty to classify licensed premises or portions of licensed premises as off-limits to persons under the age of twenty-one years of age.

**Sec. 15.** RCW 66.98.060 and 1997 c 321 s 54 are each amended to read as follows:

Notwithstanding any provisions of chapter 62, Laws of 1933 ex. sess., as last amended, or of any provisions of any other law which may otherwise be applicable, it shall be lawful for the holder of a ~~((full-service))~~ spirits, beer, and wine restaurant license to sell beer, wine, and spirituous liquor in this state in accordance with the terms of chapter 5, Laws of 1949.

**Sec. 16.** RCW 82.08.150 and 1997 c 321 s 55 are each amended to read as follows:

(1) There is levied and shall be collected a tax upon each retail sale of spirits, or strong beer in the original package at the rate of fifteen percent of the selling price. The tax imposed in this subsection shall apply to all such sales including sales by the Washington state liquor stores and agencies, but excluding sales to ~~((full-service))~~ spirits, beer, and wine restaurant licensees.

(2) There is levied and shall be collected a tax upon each sale of spirits, or strong beer in the original package at the rate of ten percent of the selling price on sales by Washington state liquor stores and agencies to ~~((full-service))~~ spirits, beer, and wine restaurant licensees.

(3) There is levied and shall be collected an additional tax upon each retail sale of spirits in the original package at the rate of one dollar and seventy-two cents per liter. The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to ~~((full-service))~~ spirits, beer, and wine restaurant licensees.

(4) An additional tax is imposed equal to fourteen percent multiplied by the taxes payable under subsections (1), (2), and (3) of this section.

(5) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of seven cents per liter. The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to ~~((full-service))~~ spirits, beer, and wine restaurant licensees. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(6)(a) An additional tax is imposed upon retail sale of spirits in the original package at the rate of one and seven-tenths percent of the selling price through June 30, 1995, two and six-tenths percent of the selling price for the period July 1, 1995, through June 30, 1997, and three and four-tenths of the selling price thereafter. This additional tax applies to all such sales including sales by Washington state liquor stores and agencies, but excluding sales to ~~((full-service))~~ spirits, beer, and wine restaurant licensees.



(b) An additional tax is imposed upon retail sale of spirits in the original package at the rate of one and one-tenth percent of the selling price through June 30, 1995, one and seven-tenths percent of the selling price for the period July 1, 1995, through June 30, 1997, and two and three-tenths of the selling price thereafter. This additional tax applies to all such sales to ~~((full-service))~~ spirits, beer, and wine restaurant licensees.

(c) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of twenty cents per liter through June 30, 1995, thirty cents per liter for the period July 1, 1995, through June 30, 1997, and forty-one cents per liter thereafter. This additional tax applies to all such sales including sales by Washington state liquor stores and agencies, and including sales to ~~((full-service))~~ spirits, beer, and wine restaurant licensees.

(d) All revenues collected during any month from additional taxes under this subsection shall be deposited in the health services account created under RCW 43.72.900 by the twenty-fifth day of the following month.

(7) The tax imposed in RCW 82.08.020 shall not apply to sales of spirits or strong beer in the original package.

(8) The taxes imposed in this section 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 under this section. The taxes required by this section to be collected by the seller shall be stated separately from the selling price and for purposes of determining the tax due from the buyer to the seller, it shall be conclusively presumed that the selling price quoted in any price list does not include the taxes imposed by this section.

(9) As used in this section, the terms, "spirits," "strong beer," and "package" shall have the meaning ascribed to them in chapter 66.04 RCW.

**NEW SECTION.** Sec. 17. This act takes effect July 1, 1998.

Passed the Senate February 13, 1998.

Passed the House March 10, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.

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## CHAPTER 127

[Engrossed Substitute Senate Bill 6648]

### LICENSING RETAIL ALCOHOLIC BEVERAGES IN WHICH NO MANUFACTURERS, IMPORTERS, OR WHOLESALERS HAVE AN INTEREST

AN ACT Relating to permitting the licensing of retail alcoholic beverage businesses in which no manufacturer, importer, or wholesaler has a direct or indirect interest; amending RCW 66.28.010; and providing an effective date.

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

**Sec. 1.** RCW 66.28.010 and 1997 c 321 s 46 are each amended to read as follows:

(1)(a) No manufacturer, importer, or distributor, or person financially interested, directly or indirectly, in such business; whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business, unless the retail business is owned by a corporation in which a manufacturer or importer has no direct stock ownership and there are no interlocking officers and directors, the retail license is held by a corporation that is not owned directly or indirectly by a manufacturer or importer, the sales of liquor are incidental to the primary activity of operating the property as a hotel, alcoholic beverages produced by the manufacturer or importer or their subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation or the retail licensee; nor shall any manufacturer, importer, or distributor own any of the property upon which such licensed persons conduct their business; nor shall any such licensed person, under any arrangement whatsoever, conduct his or her business upon property in which any manufacturer, importer, or distributor has any interest unless title to that property is owned by a corporation in which a manufacturer has no direct stock ownership and there are no interlocking officers or directors, the retail license is held by ~~((an independent concessionaire which))~~ a corporation that is not owned directly or indirectly by the manufacturer ~~((or property owner))~~, the sales of liquor are incidental to the primary activity of operating the property either as a hotel or as an amphitheater offering live musical and similar live entertainment activities to the public, alcoholic beverages produced by the manufacturer or any of its subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation of the retail licensee. Except as provided in subsection (3) of this section, no manufacturer, importer, or distributor shall advance moneys or moneys' worth to a licensed person under an arrangement, nor shall such licensed person receive, under an arrangement, an advance of moneys or moneys' worth. "Person" as used in this section only shall not include those state or federally chartered banks, state or federally chartered savings and loan associations, state or federally chartered mutual savings banks, or institutional investors which are not controlled directly or indirectly by a manufacturer, importer, or distributor as long as the bank, savings and loan association, or institutional investor does not influence or attempt to influence the purchasing practices of the retailer with respect to alcoholic beverages. No manufacturer, importer, or distributor shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer, importer, or distributor sell at retail any liquor as herein defined. A corporation granted an exemption under this subsection may use debt instruments issued in connection with financing construction or operations of its facilities.

(b) Nothing in this section shall prohibit a licensed domestic brewery or microbrewery from being licensed as a retailer pursuant to chapter 66.24 RCW

for the purpose of selling beer or wine at retail on the brewery premises and nothing in this section shall prohibit a domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine distributor.

(c) Nothing in this section shall prohibit a licensed domestic brewery, microbrewery, domestic winery, or a lessee of a licensed domestic brewer, microbrewery, or domestic winery, from being licensed as a full service restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a full service restaurant premises on the property on which the primary manufacturing facility of the licensed domestic brewer, microbrewery, or domestic winery is located or on contiguous property owned by the licensed domestic brewer, microbrewery, or domestic winery as prescribed by rules adopted by the board pursuant to chapter 34.05 RCW.

(2) Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien, or through interlocking directors, or otherwise. Pursuant to rules promulgated by the board in accordance with chapter 34.05 RCW manufacturers, distributors, and importers may perform, and retailers may accept the service of building, rotating and restocking case displays and stock room inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; price case goods of their own brands; and perform such similar normal business services as the board may by regulation prescribe.

(3)(a) This section does not prohibit a manufacturer, importer, or distributor from providing services to a special occasion licensee for: (i) Installation of draft beer dispensing equipment or advertising, (ii) advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, or (iii) a special occasion licensee from receiving any such services as may be provided by a manufacturer, importer, or distributor. Nothing in this section shall prohibit a retail licensee, or any person financially interested, directly or indirectly, in such a retail licensee from having a financial interest, direct or indirect, in a business which provides, for a compensation commensurate in value to the services provided, bottling, canning or other services to a manufacturer, so long as the retail licensee or person interested therein has no direct financial interest in or control of said manufacturer.

(b) A person holding contractual rights to payment from selling a liquor distributor's business and transferring the license shall not be deemed to have a financial interest under this section if the person (i) lacks any ownership in or control of the distributor, (ii) is not employed by the distributor, and (iii) does not influence or attempt to influence liquor purchases by retail liquor licensees from the distributor.

(c) The board shall adopt such rules as are deemed necessary to carry out the purposes and provisions of subsection (3)(a) of this section in accordance with the administrative procedure act, chapter 34.05 RCW.

(4) A license issued under RCW 66.24.395 does not constitute a retail license for the purposes of this section.

(5) A public house license issued under RCW 66.24.580 does not violate the provisions of this section as to a retailer having an interest directly or indirectly in a liquor-licensed manufacturer.

NEW SECTION. Sec. 2. This act takes effect July 1, 1998.

Passed the Senate February 17, 1998.

Passed the House March 4, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.

**CHAPTER 128**

[Senate Bill 6729]

**TASK FORCE ON FINANCING SENIOR HOUSING AND  
HOUSING FOR PERSONS WITH DISABILITIES**

AN ACT Relating to financing needs for senior housing; creating new sections; providing an expiration date; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that the availability of safe and affordable housing is vital to low-income senior citizens and persons with disabilities. The legislature further finds that the availability of low-cost financing is necessary for the development or preservation of housing for seniors and persons with disabilities. The legislature further finds that many existing housing developments for seniors and persons with disabilities are in need of renovation. The legislature further finds that there is a need to explore alternative financing techniques to cover the cost of development or renovation of housing for seniors and persons with disabilities. It is the intent of the legislature to create the task force on financing housing for seniors and persons with disabilities to explore alternative financing techniques for the development and renovation of housing developments in Washington for low-income seniors and persons with disabilities.

NEW SECTION. Sec. 2. (1) There is created the task force on financing senior housing and housing for persons with disabilities to consist of thirteen members. The task force consists of the following members:

(a) The director of the department of community, trade, and economic development or the director's designee, who serves as an ex officio member and as chair;

(b) The executive director of the Washington state housing finance commission or the director's designee, who serves as an ex officio member;

(c) The secretary of the department of social and health services or the secretary's designee, who serves as an ex officio member;

(d) Three representatives from organizations involved in the management of senior housing developments, one of which must be from an organization involved in the ownership of senior housing developments;

(e) Two representatives from financial institutions involved in financing senior housing developments, one of which must be from an investment and banking firm involved in financing federally insured senior housing developments;

(f) One representative from a mobile home owners association that represents seniors;

(g) One representative from a mobile home park owners association;

(h) Two representatives from state-wide organizations that represent persons with disabilities; and

(i) One representative from a public housing authority.

(2) The director of the department of community, trade, and economic development shall appoint all nonex officio members to the task force on financing senior housing and housing for persons with disabilities. The vice-chair of the task force is selected by majority vote of the task force members. The members of the task force on financing senior housing and housing for persons with disabilities serve without compensation.

(3) The department of community, trade, and economic development, the department of social and health services, and the Washington state housing finance commission shall supply such information and assistance as is necessary for the task force on financing senior housing and housing for persons with disabilities to carry out its duties under section 3 of this act.

(4) The department of community, trade, and economic development, the department of social and health services, and the Washington state housing finance commission shall provide administrative and clerical assistance to the task force on financing senior housing and housing for persons with disabilities.

**NEW SECTION.** Sec. 3. The task force on financing senior housing and housing for persons with disabilities shall by December 15, 1998, prepare and submit to the house of representatives committee on trade and economic development and the senate committee on financial institutions, insurance and housing a progress report on the findings and recommendations required under chapter 383, Laws of 1997. The task force may also make additional recommendations on financial and regulatory techniques designed to assist in the construction of new facilities or renovation of existing housing facilities for seniors and persons with disabilities.

**NEW SECTION.** Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**NEW SECTION.** Sec. 5. This act expires February 1, 1999.

Passed the Senate March 9, 1998.  
 Passed the House March 4, 1998.  
 Approved by the Governor March 23, 1998.  
 Filed in Office of Secretary of State March 23, 1998.

**CHAPTER 129**

[Substitute House Bill 1088]  
 STATE FOSSIL

AN ACT Relating to the state fossil; adding a new section to chapter 1.20 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature recognizes that the large, hairy prehistoric elephants of the extinct genus *Mammuthus* roamed the north American continent, including the Pacific Northwest, during the Pleistocene epoch (Ice Ages).

**NEW SECTION. Sec. 2.** A new section is added to chapter 1.20 RCW to read as follows:

The Columbian mammoth of North America, *Mammuthus COLUMBI*, is hereby designated as the official fossil of the state of Washington.

Passed the House January 16, 1998.  
 Passed the Senate March 11, 1998.  
 Approved by the Governor March 25, 1998.  
 Filed in Office of Secretary of State March 25, 1998.

**CHAPTER 130**

[Substitute House Bill 1121]  
 CUSTODY OF DEPENDENT CHILDREN

AN ACT Relating to dependent children; amending RCW 13.34.030, 13.34.130, and 26.10.030; and reenacting and amending RCW 13.34.145.

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

**Sec. 1.** RCW 13.34.030 and 1997 c 386 s 7 are each amended to read as follows:

For purposes of this chapter:

(1) "Child" and "juvenile" means any individual under the age of eighteen years.

(2) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until the child returns home, an adoption decree, a permanent custody order, or guardianship order is entered, or the dependency is dismissed, whichever occurs soonest. If the most recent date of removal occurred prior to the filing of

a dependency petition under this chapter or after filing but prior to entry of a disposition order, such time periods shall be included when calculating the length of a child's current placement episode.

(3) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to RCW 13.34.232 for the limited purpose of assisting the court in the supervision of the dependency.

(4) "Dependent child" means any child:

(a) Who has been abandoned; that is, where the child's parent, guardian, or other custodian has expressed either by statement or conduct, an intent to forego, for an extended period, parental rights or parental responsibilities despite an ability to do so. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon;

(b) Who is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; or

(c) Who has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.

(5) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding other than a proceeding under this chapter; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" shall not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(6) "Guardian ad litem" means a person, appointed by the court to represent the best interest of a child in a proceeding under this chapter, or in any matter which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

(7) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

(8) "Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(9) "Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services capable of preventing the need for out-of-home placement while protecting the child.

Sec. 2. RCW 13.34.130 and 1997 c 280 s 1 are each amended to read as follows:

If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030; after consideration of the predisposition report prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In selecting a program, the court should choose those services that least interfere with family autonomy, provided that the services are adequate to protect the child.

(b) Order that the child be removed from his or her home and ordered into the custody, control, and care of a relative or the department of social and health services or a licensed child placing agency for placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or in a home not required to be licensed pursuant to chapter 74.15 RCW. Unless there is reasonable cause to believe that the safety or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, such child shall be placed with a person who is related to the child as defined in RCW 74.15.020(4)(a) and with whom the child has a relationship and is comfortable, and who is willing and available to care for the child. Placement of the child with a relative under this subsection shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

(i) There is no parent or guardian available to care for such child;

(ii) The parent, guardian, or legal custodian is not willing to take custody of the child;

(iii) The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger; or



(iv) The extent of the child's disability is such that the parent, guardian, or legal custodian is unable to provide the necessary care for the child and the parent, guardian, or legal custodian has determined that the child would benefit from placement outside of the home.

(2) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the court finds it is recommended by the supervising agency, that it is in the best interests of the child and that it is not reasonable to provide further services to reunify the family because the existence of aggravated circumstances make it unlikely that services will effectuate the return of the child to the child's parents in the near future. In determining whether aggravated circumstances exist, the court shall consider one or more of the following:

(a) Conviction of the parent of rape of the child in the first, second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and 9A.44.079;

(b) Conviction of the parent of criminal mistreatment of the child in the first or second degree as defined in RCW 9A.42.020 and 9A.42.030;

(c) Conviction of the parent of one of the following assault crimes, when the child is the victim: Assault in the first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

(d) Conviction of the parent of murder, manslaughter, or homicide by abuse of the child's other parent, sibling, or another child;

(e) A finding by a court that a parent is a sexually violent predator as defined in RCW 71.09.020;

(f) Failure of the parent to complete available treatment ordered under this chapter or the equivalent laws of another state, where such failure has resulted in a prior termination of parental rights to another child and the parent has failed to effect significant change in the interim.

(3) Whenever a child is ordered removed from the child's home, the agency charged with his or her care shall provide the court with:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; permanent legal custody; or long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; and independent living, if appropriate and if the child is age sixteen or older. Whenever a permanency plan identifies independent living as a goal, the plan shall also specifically identify the services that will be provided to assist the child to make a successful transition from foster care to independent living. Before the court approves independent living as a permanency plan of care, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial affairs and to manage his

or her personal, social, educational, and nonfinancial affairs. The department shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(b) Unless the court has ordered, pursuant to subsection (2) of this section, that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, and what actions the agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The agency plan shall specify what services the parents will be offered in order to enable them to resume custody, what requirements the parents must meet in order to resume custody, and a time limit for each service plan and parental requirement.

(ii) The agency shall be required to encourage the maximum parent-child contact possible, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare.

(iii) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

(iv) The agency charged with supervising a child in placement shall provide all reasonable services that are available within the agency, or within the community, or those services which the department of social and health services has existing contracts to purchase. It shall report to the court if it is unable to provide such services.

(c) If the court has ordered, pursuant to subsection (2) of this section, that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The agency shall not be required to develop a plan of services for the parents or provide services to the parents.

(4) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative, the child shall remain in foster care and the court shall direct the supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives, pursuant to this section, shall be contingent upon cooperation by the relative with the agency case plan and compliance with court

orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's home, subject to review by the court.

(5) Except for children whose cases are reviewed by a citizen review board under chapter 13.70 RCW, the status of all children found to be dependent shall be reviewed by the court at least every six months from the beginning date of the placement episode or the date dependency is established, whichever is first, at a hearing in which it shall be determined whether court supervision should continue. The review shall include findings regarding the agency and parental completion of disposition plan requirements, and if necessary, revised permanency time limits.

(a) A child shall not be returned home at the review hearing unless the court finds that a reason for removal as set forth in this section no longer exists. The parents, guardian, or legal custodian shall report to the court the efforts they have made to correct the conditions which led to removal. If a child is returned, casework supervision shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention.

(b) If the child is not returned home, the court shall establish in writing:

(i) Whether reasonable services have been provided to or offered to the parties to facilitate reunion, specifying the services provided or offered;

(ii) Whether the child has been placed in the least-restrictive setting appropriate to the child's needs, including whether consideration and preference has been given to placement with the child's relatives;

(iii) Whether there is a continuing need for placement and whether the placement is appropriate;

(iv) Whether there has been compliance with the case plan by the child, the child's parents, and the agency supervising the placement;

(v) Whether progress has been made toward correcting the problems that necessitated the child's placement in out-of-home care;

(vi) Whether the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;

(vii) Whether additional services are needed to facilitate the return of the child to the child's parents; if so, the court shall order that reasonable services be offered specifying such services; and

(viii) The projected date by which the child will be returned home or other permanent plan of care will be implemented.

(c) The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed.

**Sec. 3.** RCW 13.34.145 and 1995 c 311 s 20 and 1995 c 53 s 2 are each reenacted and amended to read as follows:

(1) A permanency plan shall be developed no later than sixty days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130,

whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(a) Whenever a child is placed in out-of-home care pursuant to RCW 13.34.130, the agency that has custody of the child shall provide the court with a written permanency plan of care directed towards securing a safe, stable, and permanent home for the child as soon as possible. The plan shall identify one of the following outcomes as the primary goal and may also identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; permanent legal custody; or long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; and independent living, if appropriate and if the child is age sixteen or older and the provisions of subsection (2) of this section are met.

(b) The identified outcomes and goals of the permanency plan may change over time based upon the circumstances of the particular case.

(c) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in out-of-home care for fifteen months. In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(d) For purposes related to permanency planning:

(i) "Guardianship" means a dependency guardianship pursuant to this chapter, a legal guardianship pursuant to chapter 11.88 RCW, or equivalent laws of another state or a federally recognized Indian tribe.

(ii) "Permanent custody order" means a custody order entered pursuant to chapter 26.10 RCW.

(iii) "Permanent legal custody" means legal custody pursuant to chapter 26.10 RCW or equivalent laws of another state or of a federally recognized Indian tribe.

(2) Whenever a permanency plan identifies independent living as a goal, the plan shall also specifically identify the services that will be provided to assist the child to make a successful transition from foster care to independent living. Before the court approves independent living as a permanency plan of care, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial affairs and to manage his or her personal, social, educational, and nonfinancial affairs. The department shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(3)(a) For children ten and under, a permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree ~~((or))~~, guardianship order, or permanent custody order has not previously been entered. The hearing shall take place no

later than twelve months following commencement of the current placement episode.

(b) For children over ten, a permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least fifteen months and an adoption decree ((or)), guardianship order, or permanent custody order has not previously been entered. The hearing shall take place no later than eighteen months following commencement of the current placement episode.

(4) Whenever a child is removed from the home of a dependency guardian or long-term relative or foster care provider, and the child is not returned to the home of the parent, guardian, or legal custodian but is placed in out-of-home care, a permanency planning hearing shall take place no later than twelve or eighteen months, as provided in subsection (3) of this section, following the date of removal unless, prior to the hearing, the child returns to the home of the dependency guardian or long-term care provider, the child is placed in the home of the parent, guardian, or legal custodian, an adoption decree ((or)), guardianship order, or permanent custody order is entered, or the dependency is dismissed.

(5) No later than ten working days prior to the permanency planning hearing, the agency having custody of the child shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties and their legal counsel, if any.

(6) At the permanency planning hearing, the court shall enter findings as required by RCW 13.34.130(5) and shall review the permanency plan prepared by the agency. If the child has resided in the home of a foster parent or relative for more than six months prior to the permanency planning hearing, the court shall also enter a finding regarding whether the foster parent or relative was informed of the hearing as required in RCW 74.13.280. If a goal of long-term foster or relative care has been achieved prior to the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remain appropriate. In cases where the primary permanency planning goal has not yet been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal. In all cases, the court shall:

(a)(i) Order the permanency plan prepared by the agency to be implemented;  
or

(ii) Modify the permanency plan, and order implementation of the modified plan; and

(b)(i) Order the child returned home only if the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists; or

(ii) Order the child to remain in out-of-home care for a limited specified time period while efforts are made to implement the permanency plan.

(7) If the court orders the child returned home, casework supervision shall continue for at least six months, at which time a review hearing shall be held

pursuant to RCW 13.34.130(5), and the court shall determine the need for continued intervention.

(8) Continued juvenile court jurisdiction under this chapter shall not be a barrier to the entry of an order establishing a legal guardianship or permanent legal custody when, (a) the court has ordered implementation of a permanency plan that includes legal guardianship or permanent legal custody, and (b) the party pursuing the legal guardianship or permanent legal custody is the party identified in the permanency plan as the prospective legal guardian or custodian. During the pendency of such proceeding, juvenile court shall conduct review hearings and further permanency planning hearings as provided in this chapter. At the conclusion of the legal guardianship or permanent legal custody proceeding, a juvenile court hearing shall be held for the purpose of determining whether dependency should be dismissed. If a guardianship or permanent custody order has been entered, the dependency shall be dismissed.

(9) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the dependency is dismissed, whichever occurs first.

~~((9))~~ (10) Except as otherwise provided in RCW 13.34.235, the status of all dependent children shall continue to be reviewed by the court at least once every six months, in accordance with RCW 13.34.130(5), until the dependency is dismissed. Prior to the second permanency planning hearing, the agency that has custody of the child shall consider whether to file a petition for termination of parental rights.

~~((10))~~ (11) Nothing in this chapter may be construed to limit the ability of the agency that has custody of the child to file a petition for termination of parental rights or a guardianship petition at any time following the establishment of dependency. Upon the filing of such a petition, a fact-finding hearing shall be scheduled and held in accordance with this chapter unless the agency requests dismissal of the petition prior to the hearing or unless the parties enter an agreed order terminating parental rights, establishing guardianship, or otherwise resolving the matter.

~~((11))~~ (12) The approval of a permanency plan that does not contemplate return of the child to the parent does not relieve the supervising agency of its obligation to provide reasonable services, under this chapter, intended to effectuate the return of the child to the parent, including but not limited to, visitation rights.

~~((12))~~ (13) Nothing in this chapter may be construed to limit the procedural due process rights of any party in a termination or guardianship proceeding filed under this chapter.

Sec. 4. RCW 26.10.030 and 1987 c 460 s 27 are each amended to read as follows:

(1) Except as authorized for proceedings brought under chapter 26.50 RCW in district or municipal courts, a child custody proceeding is commenced in the

superior court by a person other than a parent, by filing a petition seeking custody of the child in the county where the child is permanently resident or where the child is found, but only if the child is not in the physical custody of one of its parents or if the petitioner alleges that neither parent is a suitable custodian. Prior to a child custody hearing, the court shall determine if the child is the subject of a pending dependency action.

(2) Notice of a child custody proceeding shall be given to the child's parent, guardian and custodian, who may appear and be heard and may file a responsive pleading. The court may, upon a showing of good cause, permit the intervention of other interested parties.

Passed the House March 7, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

## CHAPTER 131

[Engrossed Substitute House Bill 1230]

### STUDENTS' RELIGIOUS RIGHTS

AN ACT Relating to students' rights; adding a new section to chapter 28A.600 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature recognizes the right of free speech and freedom of religion as guaranteed through the First Amendment to the United States Constitution and Article I, sections 5 and 11 of the Washington state Constitution and that these rights extend to students enrolled in the common schools of our state.

The legislature also recognizes that students may choose to exercise these rights, as protected under the law, in response to the challenges of academic pursuit. While the legislature upholds the rights of students to freely express their religious beliefs and right of free speech, it also holds firmly that it is not the role of education to solicit student responses that force students to reveal, analyze, or critique their religious beliefs.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28A.600 RCW to read as follows:

(1) The First Amendment to the United States Constitution, and Article I, sections 5 and 11 of the Washington state Constitution guarantee that students retain their rights of free speech and free exercise of religion, notwithstanding the student's enrollment and attendance in a common school. These rights include, but are not limited to, the right of an individual student to freely express and incorporate the student's religious beliefs and opinions where relevant or appropriate in any and all class work, homework, evaluations or tests. School personnel may not grade the class work, homework, evaluation, or test on the

religious expression but may grade the student's performance on scholastic content such as spelling, sentence structure, and grammar, and the degree to which the student's performance reflects the instruction and objectives established by the school personnel. School personnel may not subject an individual student who expresses religious beliefs or opinions in accordance with this section to any form of retribution or negative consequence and may not penalize the student's standing, evaluations, or privileges. An employee of the school district may not censure a student's expression of religious beliefs or opinions, when relevant or appropriate, in any class work, homework, evaluations or tests, extracurricular activities, or other activities under the sponsorship or auspices of the school district.

(2) This section is not intended to impose any limit on the exchange of ideas in the common schools of this state. No officer, employee, agent, or contractor of a school district may impose his or her religious beliefs on any student in class work, homework, evaluations or tests, extracurricular activities, or other activities under the auspices of the school district.

(3) The superintendent of public instruction shall distribute to the school districts information about laws governing students' rights of religious expression in school.

Passed the House March 7, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

## CHAPTER 132

[Second Substitute House Bill 1618]

### IMPAIRED PHYSICIAN PROGRAM—REVISIONS

AN ACT Relating to treatment programs for impaired physicians; amending RCW 18.71.0195, 18.71.300, 18.71.310, 18.71.320, 18.71.330, 18.71.340, 18.130.070, 18.130.080, 18.130.175, 18.130.300, 18.57A.020, and 18.71A.020; adding a new section to chapter 18.71 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature finds that the self-imposed license surcharge on physician licenses to fund a program to help physicians with chemical dependency or mental illness is not being fully spent on that program. It is the intent of the legislature that the program be fully funded and that funds collected into the impaired physician account be spent only on the program.

**Sec. 2.** RCW 18.71.0195 and 1994 sp.s. c 9 s 328 are each amended to read as follows:

(1) The contents of any report (~~file~~) filed under RCW 18.130.070 shall be confidential and exempt from public disclosure pursuant to chapter 42.17 RCW, except that it may be reviewed (a) by the licensee involved or his or her counsel or authorized representative who may submit any additional exculpatory or



explanatory statements or other information, which statements or other information shall be included in the file, or (b) by a representative of the commission, or investigator thereof, who has been assigned to review the activities of a licensed physician.

Upon a determination that a report is without merit, the commission's records may be purged of information relating to the report.

(2) Every individual, medical association, medical society, hospital, medical service bureau, health insurance carrier or agent, professional liability insurance carrier, professional standards review organization, ~~((and))~~ agency of the federal, state, or local government ~~((shall be)), or the entity established by RCW 18.71.300 and its officers, agents, and employees are immune from civil liability, whether direct or derivative, for providing information to the commission under RCW 18.130.070, or for which an individual health care provider has immunity under the provisions of RCW 4.24.240, 4.24.250, or 4.24.260.~~

Sec. 3. RCW 18.71.300 and 1994 sp.s. c 9 s 329 are each amended to read as follows:

~~((Unless the context clearly requires otherwise;))~~ The definitions in this section apply throughout RCW 18.71.310 through 18.71.340 unless the context clearly requires otherwise.

(1) ~~((“Committee”))~~ “Entity” means a nonprofit corporation formed by physicians who have expertise in the areas of ~~((alcoholism))~~ alcohol abuse, drug abuse, ((or)) alcoholism, other drug addictions, and mental illness and who broadly represent the physicians of the state and that has been designated to perform any or all of the activities set forth in RCW 18.71.310(1) ~~((pursuant to rules adopted))~~ by the commission ~~((under chapter 34.05 RCW)).~~

(2) “Impaired” or “impairment” means the ~~((presence of the diseases of alcoholism, drug abuse, mental illness))~~ inability to practice medicine with reasonable skill and safety to patients by reason of physical or mental illness including alcohol abuse, drug abuse, alcoholism, other drug addictions, or other debilitating conditions.

(3) “Impaired physician program” means the program for the prevention, detection, intervention, ~~((and))~~ monitoring, and treatment of impaired physicians established by the commission pursuant to RCW 18.71.310(1).

(4) “Physician” or “practitioner” means a person licensed under this chapter, chapter 18.71A RCW, or a professional licensed under another chapter of Title 18 RCW whose disciplining authority has a contract with the entity for an impaired practitioner program for its license holders.

(5) “Treatment program” means a plan of care and rehabilitation services provided by those organizations or persons authorized to provide such services to be approved by the commission or entity for impaired physicians taking part in the impaired physician program created by RCW 18.71.310.

Sec. 4. RCW 18.71.310 and 1997 c 79 s 2 are each amended to read as follows:

(1) The commission shall enter into a contract with the ~~((committee))~~ entity to implement an impaired physician program. The commission may enter into a contract with the entity for up to six years in length. The impaired physician program may include any or all of the following:

(a) ~~((Contracting))~~ Entering into relationships supportive of the impaired physician program with ~~((providers of))~~ professionals who provide either evaluation or treatment ~~((programs))~~ services, or both;

(b) Receiving and ~~((evaluating))~~ assessing reports of suspected impairment from any source;

(c) Intervening in cases of verified impairment, or in cases where there is reasonable cause to suspect impairment;

(d) Upon reasonable cause, referring suspected or verified impaired physicians ~~((to))~~ for evaluation or treatment ~~((programs))~~;

(e) Monitoring the treatment and rehabilitation of impaired physicians including those ordered by the commission;

(f) Providing ~~((post-treatment))~~ monitoring and continuing treatment and rehabilitative support of ~~((rehabilitative-impaired))~~ physicians;

(g) Performing such other activities as agreed upon by the commission and the ~~((committee))~~ entity; and

(h) Providing prevention and education services.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of ~~((up to))~~ twenty-five dollars per year on each license renewal or issuance of a new license to be collected by the department of health from every physician and surgeon licensed under this chapter in addition to other license fees. These moneys shall be placed in the ~~((health-professions))~~ impaired physician account to be used solely for the implementation of the impaired physician program.

Sec. 5. RCW 18.71.320 and 1994 sp.s. c 9 s 331 are each amended to read as follows:

The ~~((committee))~~ entity shall develop procedures in consultation with the commission for:

(1) Periodic reporting of statistical information regarding impaired physician activity;

(2) Periodic disclosure and joint review of such information as the commission may deem appropriate regarding reports received, contacts or investigations made, and the disposition of each report~~((PROVIDED, That))~~. However, the ~~((committee))~~ entity shall not disclose any personally identifiable information except as provided in subsections (3) and (4) of this section;

(3) Immediate reporting to the commission of the name and results of any contact or investigation regarding any suspected or verified impaired physician who is reasonably believed probably to constitute an imminent danger to himself or herself or to the public;

(4) Reporting to the commission, in a timely fashion, any suspected or verified impaired physician who ~~((refuses))~~ fails to cooperate with the ~~((commit-~~

~~tee, refuses)) entity, fails to submit to evaluation or treatment, or whose impairment is not substantially alleviated through treatment, ((and)) or who, in the opinion of the ((committee)) entity, is probably unable to practice medicine with reasonable skill and safety(~~(. However, impairment, in and of itself, shall not give rise to a presumption of the inability to practice medicine with reasonable skill and safety))~~);~~

(5) Informing each participant of the impaired physician program of the program procedures, the responsibilities of program participants, and the possible consequences of noncompliance with the program.

Sec. 6. RCW 18.71.330 and 1994 sp.s. c 9 s 332 are each amended to read as follows:

If the commission has reasonable cause to believe that a physician is impaired, the commission shall cause an evaluation of such physician to be conducted by the ((committee)) entity or the ((committee's)) entity's designee or the commission's designee for the purpose of determining if there is an impairment. The ((committee)) entity or appropriate designee shall report the findings of its evaluation to the commission.

Sec. 7. RCW 18.71.340 and 1987 c 416 s 6 are each amended to read as follows:

All ((committee)) entity records are not subject to disclosure pursuant to chapter 42.17 RCW.

Sec. 8. RCW 18.130.070 and 1989 c 373 s 19 are each amended to read as follows:

(1) The disciplining authority may adopt rules requiring any person, including, but not limited to, licensees, corporations, organizations, health care facilities, impaired practitioner programs, or voluntary substance abuse monitoring programs approved by the disciplining authority and state or local governmental agencies, to report to the disciplining authority any conviction, determination, or finding that a license holder has committed an act which constitutes unprofessional conduct, or to report information to the disciplining authority, an impaired practitioner program, or voluntary substance abuse monitoring program approved by the disciplining authority, which indicates that the license holder may not be able to practice his or her profession with reasonable skill and safety to consumers as a result of a mental or physical condition. To facilitate meeting the intent of this section, the cooperation of agencies of the federal government is requested by reporting any conviction, determination, or finding that a federal employee or contractor regulated by the disciplinary authorities enumerated in this chapter has committed an act which constituted unprofessional conduct and reporting any information which indicates that a federal employee or contractor regulated by the disciplinary authorities enumerated in this chapter may not be able to practice his or her profession with reasonable skill and safety as a result of a mental or physical condition.

(2) If a person fails to furnish a required report, the disciplining authority may petition the superior court of the county in which the person resides or is found, and the court shall issue to the person an order to furnish the required report. A failure to obey the order is a contempt of court as provided in chapter 7.21 RCW.

(3) A person is immune from civil liability, whether direct or derivative, for providing information to the disciplining authority pursuant to the rules adopted under subsection (1) of this section.

(4) The holder of a license subject to the jurisdiction of this chapter shall report to the disciplining authority any conviction, determination, or finding that the licensee has committed unprofessional conduct or is unable to practice with reasonable skill or safety. Failure to report within thirty days of notice of the conviction, determination, or finding constitutes grounds for disciplinary action.

Sec. 9. RCW 18.130.080 and 1986 c 259 s 5 are each amended to read as follows:

A person, including but not limited to consumers, licensees, corporations, organizations, health care facilities, impaired practitioner programs, or voluntary substance abuse monitoring programs approved by disciplining authorities, and state and local governmental agencies, may submit a written complaint to the disciplining authority charging a license holder or applicant with unprofessional conduct and specifying the grounds therefor or to report information to the disciplining authority, or voluntary substance abuse monitoring program, or an impaired practitioner program approved by the disciplining authority, which indicates that the license holder may not be able to practice his or her profession with reasonable skill and safety to consumers as a result of a mental or physical condition. If the disciplining authority determines that the complaint merits investigation, or if the disciplining authority has reason to believe, without a formal complaint, that a license holder or applicant may have engaged in unprofessional conduct, the disciplining authority shall investigate to determine whether there has been unprofessional conduct. A person who files a complaint or reports information under this section in good faith is immune from suit in any civil action related to the filing or contents of the complaint.

Sec. 10. RCW 18.130.175 and 1993 c 367 s 3 are each amended to read as follows:

(1) In lieu of disciplinary action under RCW 18.130.160 and if the disciplining authority determines that the unprofessional conduct may be the result of substance abuse, the disciplining authority may refer the license holder to a voluntary substance abuse monitoring program approved by the disciplining authority.

The cost of the treatment shall be the responsibility of the license holder, but the responsibility does not preclude payment by an employer, existing insurance coverage, or other sources. Primary alcoholism or other drug addiction treatment shall be provided by approved treatment programs under RCW 70.96A.020((+

~~PROVIDED, That~~) or by any other provider approved by the entity or the commission. However, nothing shall prohibit the disciplining authority from approving additional services and programs as an adjunct to primary alcoholism or other drug addiction treatment. The disciplining authority may also approve the use of out-of-state programs. Referral of the license holder to the program shall be done only with the consent of the license holder. Referral to the program may also include probationary conditions for a designated period of time. If the license holder does not consent to be referred to the program or does not successfully complete the program, the disciplining authority may take appropriate action under RCW 18.130.160. The secretary shall adopt uniform rules for the evaluation by the disciplinary authority of a relapse or program violation on the part of a license holder in the substance abuse monitoring program. The evaluation shall encourage program participation with additional conditions, in lieu of disciplinary action, when the disciplinary authority determines that the license holder is able to continue to practice with reasonable skill and safety.

(2) In addition to approving substance abuse monitoring programs that may receive referrals from the disciplining authority, the disciplining authority may establish by rule requirements for participation of license holders who are not being investigated or monitored by the disciplining authority for substance abuse. License holders voluntarily participating in the approved programs without being referred by the disciplining authority shall not be subject to disciplinary action under RCW 18.130.160 for their substance abuse, and shall not have their participation made known to the disciplining authority, if they meet the requirements of this section and the program in which they are participating.

(3) The license holder shall sign a waiver allowing the program to release information to the disciplining authority if the licensee does not comply with the requirements of this section or is unable to practice with reasonable skill or safety. The substance abuse program shall report to the disciplining authority any license holder who fails to comply with the requirements of this section or the program or who, in the opinion of the program, is unable to practice with reasonable skill or safety. License holders shall report to the disciplining authority if they fail to comply with this section or do not complete the program's requirements. License holders may, upon the agreement of the program and disciplining authority, reenter the program if they have previously failed to comply with this section.

(4) The treatment and pretreatment records of license holders referred to or voluntarily participating in approved programs shall be confidential, shall be exempt from RCW 42.17.250 through 42.17.450, and shall not be subject to discovery by subpoena or admissible as evidence except for monitoring records reported to the disciplining authority for cause as defined in subsection (3) of this section. Monitoring records relating to license holders referred to the program by the disciplining authority or relating to license holders reported to the disciplining authority by the program for cause, shall be released to the disciplining authority at the request of the disciplining authority. Records held by the disciplining

authority under this section shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena except by the license holder.

(5) "Substance abuse," as used in this section, means the impairment, as determined by the disciplining authority, of a license holder's professional services by an addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.

(6) This section does not affect an employer's right or ability to make employment-related decisions regarding a license holder. This section does not restrict the authority of the disciplining authority to take disciplinary action for any other unprofessional conduct.

(7) A person who, in good faith, reports information or takes action in connection with this section is immune from civil liability for reporting information or taking the action.

(a) The immunity from civil liability provided by this section shall be liberally construed to accomplish the purposes of this section and the persons entitled to immunity shall include:

- (i) An approved monitoring treatment program;
- (ii) The professional association operating the program;
- (iii) Members, employees, or agents of the program or association;
- (iv) Persons reporting a license holder as being possibly impaired or providing information about the license holder's impairment; and
- (v) Professionals supervising or monitoring the course of the impaired license holder's treatment or rehabilitation.

(b) The courts are strongly encouraged to impose sanctions on clients and their attorneys whose allegations under this subsection are not made in good faith and are without either reasonable objective, substantive grounds, or both.

(c) The immunity provided in this section is in addition to any other immunity provided by law.

**Sec. 11.** RCW 18.130.300 and 1994 sp.s. c 9 s 605 are each amended to read as follows:

(1) The secretary, members of the boards or commissions, or individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any disciplinary proceedings or other official acts performed in the course of their duties.

(2) A voluntary substance abuse monitoring program or an impaired practitioner program approved by a disciplining authority, or individuals acting on their behalf, are immune from suit in a civil action based on any disciplinary proceedings or other official acts performed in the course of their duties.

**NEW SECTION. Sec. 12.** A new section is added to chapter 18.71 RCW to read as follows:

The impaired physician account is created in the custody of the state treasurer. All receipts from RCW 18.71.310 from license surcharges on

physicians and physician assistants shall be deposited into the account. Expenditures from the account may only be used for the impaired physician program under this chapter. Only the secretary of health or the secretary's designee may authorize expenditures from the account. No appropriation is required for expenditures from this account.

**Sec. 13.** RCW 18.57A.020 and 1996 c 191 s 39 are each amended to read as follows:

(1) The board shall adopt rules fixing the qualifications and the educational and training requirements for licensure as an osteopathic physician assistant or for those enrolled in any physician assistant training program. The requirements shall include completion of an accredited physician assistant training program approved by the board and eligibility to take an examination approved by the board, providing such examination tests subjects substantially equivalent to the curriculum of an accredited physician assistant training program.

(2)(a) The board shall adopt rules governing the extent to which:

(i) Physician assistant students may practice medicine during training; and

(ii) Physician assistants may practice after successful completion of a training course.

(b) Such rules shall provide:

(i) That the practice of an osteopathic physician assistant shall be limited to the performance of those services for which he or she is trained; and

(ii) That each osteopathic physician assistant shall practice osteopathic medicine only under the supervision and control of an osteopathic physician licensed in this state, but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physicians at the place where services are rendered. The board may authorize the use of alternative supervisors who are licensed either under chapter 18.57 or 18.71 RCW.

(3) Applicants for licensure shall file an application with the board on a form prepared by the secretary with the approval of the board, detailing the education, training, and experience of the physician assistant and such other information as the board may require. The application shall be accompanied by a fee determined by the secretary as provided in RCW 43.70.250 and 43.70.280. A surcharge of twenty-five dollars per year may be charged on each license renewal or issuance of a new license to be collected by the department of health for physician assistant participation in an impaired practitioner program. Each applicant shall furnish proof satisfactory to the board of the following:

(a) That the applicant has completed an accredited physician assistant program approved by the board and is eligible to take the examination approved by the board;

(b) That the applicant is of good moral character; and

(c) That the applicant is physically and mentally capable of practicing osteopathic medicine as an osteopathic physician assistant with reasonable skill and safety. The board may require any applicant to submit to such examination

or examinations as it deems necessary to determine an applicant's physical and/or mental capability to safely practice as an osteopathic physician assistant.

(4) The board may approve, deny, or take other disciplinary action upon the application for a license as provided in the uniform disciplinary act, chapter 18.130 RCW. The license shall be renewed as determined under RCW 43.70.250 and 43.70.280.

**Sec. 14.** RCW 18.71A.020 and 1996 c 191 s 57 are each amended to read as follows:

(1) The commission shall adopt rules fixing the qualifications and the educational and training requirements for licensure as a physician assistant or for those enrolled in any physician assistant training program. The requirements shall include completion of an accredited physician assistant training program approved by the commission and eligibility to take an examination approved by the commission, if the examination tests subjects substantially equivalent to the curriculum of an accredited physician assistant training program. Physician assistants licensed by the board of medical examiners as of June 7, 1990, shall continue to be licensed.

(2)(a) The commission shall adopt rules governing the extent to which:

(i) Physician assistant students may practice medicine during training; and  
(ii) Physician assistants may practice after successful completion of a physician assistant training course.

(b) Such rules shall provide:

(i) That the practice of a physician assistant shall be limited to the performance of those services for which he or she is trained; and

(ii) That each physician assistant shall practice medicine only under the supervision and control of a physician licensed in this state, but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physician or physicians at the place where services are rendered.

(3) Applicants for licensure shall file an application with the commission on a form prepared by the secretary with the approval of the commission, detailing the education, training, and experience of the physician assistant and such other information as the commission may require. The application shall be accompanied by a fee determined by the secretary as provided in RCW 43.70.250 and 43.70.280. A surcharge of twenty-five dollars per year shall be charged on each license renewal or issuance of a new license to be collected by the department and deposited into the impaired physician account for physician assistant participation in the impaired physician program. Each applicant shall furnish proof satisfactory to the commission of the following:

(a) That the applicant has completed an accredited physician assistant program approved by the commission and is eligible to take the examination approved by the commission;

(b) That the applicant is of good moral character; and

(c) That the applicant is physically and mentally capable of practicing medicine as a physician assistant with reasonable skill and safety. The



commission may require an applicant to submit to such examination or examinations as it deems necessary to determine an applicant's physical or mental capability, or both, to safely practice as a physician assistant.

(4) The commission may approve, deny, or take other disciplinary action upon the application for license as provided in the Uniform Disciplinary Act, chapter 18.130 RCW. The license shall be renewed as determined under RCW 43.70.250 and 43.70.280. The commission may authorize the use of alternative supervisors who are licensed either under chapter 18.57 or 18.71 RCW.

**NEW SECTION. Sec. 15.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House March 7, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

## CHAPTER 133

[Second Engrossed Substitute House Bill 1746]

### POSSESSION OF TOBACCO BY MINORS—PENALTIES

AN ACT Relating to making minor possession of tobacco a class 3 civil infraction and clarifying penalties for violation of current laws regarding youth access to tobacco; amending RCW 70.155.080 and 70.155.100; creating a new section; and prescribing penalties.

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

**NEW SECTION. Sec. 1.** The legislature finds that the protection of adolescents' health requires a strong set of comprehensive health and law enforcement interventions. We know that youth are deterred from using alcohol in public because of existing laws making possession illegal. However, while the purchase of tobacco by youth is clearly prohibited, the possession of tobacco is not. It is the legislature's intent that youth hear consistent messages from public entities, including law enforcement, about public opposition to their illegal use of tobacco products.

**Sec. 2.** RCW 70.155.080 and 1993 c 507 s 9 are each amended to read as follows:

(1) A person under the age of eighteen who purchases or attempts to purchase, possesses, or obtains or attempts to obtain cigarettes or tobacco products commits a class 3 civil infraction under chapter 7.80 RCW and is subject to a fine as set out in chapter 7.80 RCW or participation in up to four hours of community service, or both. The court may also require participation in a smoking cessation program((, or both)). This provision does not apply if a person under the age of eighteen, with parental authorization, is participating in a controlled purchase as part of a liquor control board, law enforcement, or local health department activity.

(2) Municipal and district courts within the state have jurisdiction for enforcement of this section.

Sec. 3. RCW 70.155.100 and 1993 c 507 s 11 are each amended to read as follows:

(1) The liquor control board may suspend or revoke a retailer's license held by a business at any location, or may impose a monetary penalty as set forth in subsection (2) of this section, if the liquor control board finds that the licensee has violated RCW 26.28.080(~~((4))~~), (~~((e))~~) 70.155.020, 70.155.030, 70.155.040, 70.155.050, 70.155.060, 70.155.070, or 70.155.090.

(2) The sanctions that the liquor control board may impose against a person licensed under RCW 82.24.530 and 70.155.050 and 70.155.060 based upon one or more findings under subsection (1) of this section may not exceed the following:

(a) For violation of RCW 26.28.080(~~((4))~~) or 70.155.020:

(i) A monetary penalty of one hundred dollars for the first violation within any two-year period;

(ii) A monetary penalty of three hundred dollars for the second violation within any two-year period;

(iii) A monetary penalty of one thousand dollars and suspension of the license for a period of six months for the third violation within any two-year period;

(iv) A monetary penalty of one thousand five hundred dollars and suspension of the license for a period of twelve months for the fourth violation within any two-year period;

(v) Revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation within any two-year period;

(b) For violations of RCW 70.155.030, a monetary penalty in the amount of one hundred dollars for each day upon which such violation occurred;

(c) For violations of RCW 70.155.040 occurring on the licensed premises:

(i) A monetary penalty of one hundred dollars for the first violation within any two-year period;

(ii) A monetary penalty of three hundred dollars for the second violation within any two-year period;

(iii) A monetary penalty of one thousand dollars and suspension of the license for a period of six months for the third violation within any two-year period;

(iv) A monetary penalty of one thousand five hundred dollars and suspension of the license for a period of twelve months for the fourth violation within any two-year period;

(v) Revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation within any two-year period;

(d) For violations of RCW 70.155.050 and 70.155.060, a monetary penalty in the amount of three hundred dollars for each violation;

(e) For violations of RCW 70.155.070, a monetary penalty in the amount of one thousand dollars for each violation.

(3) The liquor control board may impose a monetary penalty upon any person other than a licensed cigarette retailer or licensed sampler if the liquor control board finds that the person has violated RCW 26.28.080(~~((4))~~), (~~(or)~~) 70.155.020, 70.155.030, 70.155.040, 70.155.050, 70.155.060, 70.155.070, or 70.155.090.

(4) The monetary penalty that the liquor control board may impose based upon one or more findings under subsection (3) of this section may not exceed the following:

(a) For violation of RCW 26.28.080(~~((4))~~) or 70.155.020, fifty dollars for the first violation and one hundred dollars for each subsequent violation;

(b) For violations of RCW 70.155.030, one hundred dollars for each day upon which such violation occurred;

(c) For violations of RCW 70.155.040, one hundred dollars for each violation;

(d) For violations of RCW 70.155.050 and 70.155.060, three hundred dollars for each violation;

(e) For violations of RCW 70.155.070, one thousand dollars for each violation.

(5) The liquor control board may develop and offer a class for retail clerks and use this class in lieu of a monetary penalty for the clerk's first violation.

(6) The liquor control board may issue a cease and desist order to any person who is found by the liquor control board to have violated or intending to violate the provisions of this chapter, RCW 26.28.080(~~((4))~~) or 82.24.500, requiring such person to cease specified conduct that is in violation. The issuance of a cease and desist order shall not preclude the imposition of other sanctions authorized by this statute or any other provision of law.

(7) The liquor control board may seek injunctive relief to enforce the provisions of RCW 26.28.080(~~((4))~~) or 82.24.500 or this chapter. The liquor control board may initiate legal action to collect civil penalties imposed under this chapter if the same have not been paid within thirty days after imposition of such penalties. In any action filed by the liquor control board under this chapter, the court may, in addition to any other relief, award the liquor control board reasonable attorneys' fees and costs.

(8) All proceedings under subsections (1) through (6) of this section shall be conducted in accordance with chapter 34.05 RCW.

(9) The liquor control board may reduce or waive either the penalties or the suspension or revocation of a license, or both, as set forth in this chapter where the elements of proof are inadequate or where there are mitigating circumstances. Mitigating circumstances may include, but are not limited to, an exercise of due diligence by a retailer. Further, the board may exceed penalties set forth in this chapter based on aggravating circumstances.

Passed the House March 9, 1998.  
Passed the Senate March 5, 1998.  
Approved by the Governor March 25, 1998.  
Filed in Office of Secretary of State March 25, 1998.

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**CHAPTER 134**

[Substitute House Bill 1829]

**COMPUTER HARDWARE—RECORDS OF TRADE-IN OR EXCHANGE INFORMATION**

AN ACT Relating to trade-in or exchange of computer hardware; adding new sections to chapter 62A.2 RCW; and prescribing penalties.

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

**NEW SECTION.** Sec. 1. (1) Any retail establishment doing business in this state that accepts for trade-in or exchange any computer hardware for the purchase of other computer hardware of greater value shall maintain, at the time of each transaction, a record of the following information:

- (a) The signature of the person with whom the transaction is made;
- (b) The date of the transaction;
- (c) The name of the person or employee or the identification number of the person or employee conducting the transaction; and
- (d) The name, date of birth, and address and telephone number of the person with whom the transaction is made.

(2) This record is open to the inspection of any commissioned law enforcement officer of the state or any of its political subdivisions, and will be maintained for a period of one year following the date of the transaction.

(3) As used in this section:

(a) "Computer" means a programmable electronic machine that performs high-speed mathematical or logical operation or that assembles, stores, correlates, or otherwise processes information.

(b) "Computer hardware" means a computer and the associated physical equipment involved in the performance of data processing or communications functions. The term does not include computer software.

**NEW SECTION.** Sec. 2. (1) Upon request, every retailer doing business in this state that accepts for trade-in or exchange computer hardware shall furnish a full, true, and correct transcript of the record of all transactions conducted, under section 1 of this act, on the proceeding day. These transactions shall be recorded on such forms as may be provided and in such format as may be required by the chief of police or the county's chief law enforcement officer within a specified time but not less than twenty-four hours.

(2) If a retailer has good cause to believe that any computer hardware in their possession has been previously lost or stolen, the retailer shall promptly report that fact to the applicable chief of police or the county's chief law enforcement officer, together with the name of the owner, if known, and the date when, and the name of the person from whom, it was received.

**NEW SECTION. Sec. 3.** It is a gross misdemeanor under chapter 9A.20 RCW for:

(1) Any person to remove, alter, or obliterate any manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon the computer hardware that is received as a trade-in or in exchange on the purchase of other computer hardware of greater value. In addition a retailer shall not accept any computer hardware as a trade-in or in exchange on the purchase of other computer hardware of greater value where the manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon the computer hardware has been removed, altered, or obliterated;

(2) Any person to knowingly make, cause, or allow to be made any false entry or misstatement of any material matter in any book, record, or writing required to be kept under this chapter; or

(3) Any person to knowingly violate any other provision of chapter . . . , Laws of 1998 (this act).

**NEW SECTION. Sec. 4.** Sections 1 through 3 of this act do not apply to trade-in or exchange of computers, or computer hardware, between consumers and retailers, or their branch facilities, when the computer or computer hardware was originally purchased from that same retailer.

**NEW SECTION. Sec. 5.** Sections 1 through 4 of this act are each added to chapter 62A.2 RCW.

Passed the House March 10, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

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## CHAPTER 135

[House Bill 1835]

### STATE AUDIT RESOLUTIONS

AN ACT Relating to audit resolution reports; and amending RCW 43.88.160.

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

**Sec. 1.** RCW 43.88.160 and 1997 c 168 s 6 are each amended to read as follows:

This section sets forth the major fiscal duties and responsibilities of officers and agencies of the executive branch. The regulations issued by the governor pursuant to this chapter shall provide for a comprehensive, orderly basis for fiscal management and control, including efficient accounting and reporting therefor, for the executive branch of the state government and may include, in addition, such requirements as will generally promote more efficient public management in the state.

(1) Governor; director of financial management. The governor, through the director of financial management, shall devise and supervise a modern and complete accounting system for each agency to the end that all revenues, expenditures, receipts, disbursements, resources, and obligations of the state shall be properly and systematically accounted for. The accounting system shall include the development of accurate, timely records and reports of all financial affairs of the state. The system shall also provide for central accounts in the office of financial management at the level of detail deemed necessary by the director to perform central financial management. The director of financial management shall adopt and periodically update an accounting procedures manual. Any agency maintaining its own accounting and reporting system shall comply with the updated accounting procedures manual and the rules of the director adopted under this chapter. An agency may receive a waiver from complying with this requirement if the waiver is approved by the director. Waivers expire at the end of the fiscal biennium for which they are granted. The director shall forward notice of waivers granted to the appropriate legislative fiscal committees. The director of financial management may require such financial, statistical, and other reports as the director deems necessary from all agencies covering any period.

(2) Except as provided in chapter 43.88C RCW, the director of financial management is responsible for quarterly reporting of primary operating budget drivers such as applicable workloads, caseload estimates, and appropriate unit cost data. These reports shall be transmitted to the legislative fiscal committees or by electronic means to the legislative evaluation and accountability program committee. Quarterly reports shall include actual monthly data and the variance between actual and estimated data to date. The reports shall also include estimates of these items for the remainder of the budget period.

(3) The director of financial management shall report at least annually to the appropriate legislative committees regarding the status of all appropriated capital projects, including transportation projects, showing significant cost overruns or underruns. If funds are shifted from one project to another, the office of financial management shall also reflect this in the annual variance report. Once a project is complete, the report shall provide a final summary showing estimated start and completion dates of each project phase compared to actual dates, estimated costs of each project phase compared to actual costs, and whether or not there are any outstanding liabilities or unsettled claims at the time of completion.

(4) In addition, the director of financial management, as agent of the governor, shall:

(a) Develop and maintain a system of internal controls and internal audits comprising methods and procedures to be adopted by each agency that will safeguard its assets, check the accuracy and reliability of its accounting data, promote operational efficiency, and encourage adherence to prescribed managerial policies for accounting and financial controls. The system developed by the director shall include criteria for determining the scope and comprehen-

siveness of internal controls required by classes of agencies, depending on the level of resources at risk.

Each agency head or authorized designee shall be assigned the responsibility and authority for establishing and maintaining internal audits following the standards of internal auditing of the institute of internal auditors;

(b) Make surveys and analyses of agencies with the object of determining better methods and increased effectiveness in the use of manpower and materials; and the director shall authorize expenditures for employee training to the end that the state may benefit from training facilities made available to state employees;

(c) Establish policies for allowing the contracting of child care services;

(d) Report to the governor with regard to duplication of effort or lack of coordination among agencies;

(e) Review any pay and classification plans, and changes thereunder, developed by any agency for their fiscal impact: PROVIDED, That none of the provisions of this subsection shall affect merit systems of personnel management now existing or hereafter established by statute relating to the fixing of qualifications requirements for recruitment, appointment, or promotion of employees of any agency. The director shall advise and confer with agencies including appropriate standing committees of the legislature as may be designated by the speaker of the house and the president of the senate regarding the fiscal impact of such plans and may amend or alter said plans, except that for the following agencies no amendment or alteration of said plans may be made without the approval of the agency concerned: Agencies headed by elective officials;

(f) Fix the number and classes of positions or authorized man years of employment for each agency and during the fiscal period amend the determinations previously fixed by the director except that the director shall not be empowered to fix said number or said classes for the following: Agencies headed by elective officials;

(g) Adopt rules to effectuate provisions contained in (a) through (f) of this subsection.

(5) The treasurer shall:

(a) Receive, keep, and disburse all public funds of the state not expressly required by law to be received, kept, and disbursed by some other persons: PROVIDED, That this subsection shall not apply to those public funds of the institutions of higher learning which are not subject to appropriation;

(b) Receive, disburse, or transfer public funds under the treasurer's supervision or custody;

(c) Keep a correct and current account of all moneys received and disbursed by the treasurer, classified by fund or account;

(d) Coordinate agencies' acceptance and use of credit cards and other payment methods, if the agencies have received authorization under RCW 43.41.180;

(e) Perform such other duties as may be required by law or by regulations issued pursuant to this law.

It shall be unlawful for the treasurer to disburse public funds in the treasury except upon forms or by alternative means duly prescribed by the director of financial management. These forms or alternative means shall provide for authentication and certification by the agency head or the agency head's designee that the services have been rendered or the materials have been furnished; or, in the case of loans or grants, that the loans or grants are authorized by law; or, in the case of payments for periodic maintenance services to be performed on state owned equipment, that a written contract for such periodic maintenance services is currently in effect and copies thereof are on file with the office of financial management; and the treasurer shall not be liable under the treasurer's surety bond for erroneous or improper payments so made. When services are lawfully paid for in advance of full performance by any private individual or business entity other than as provided for by RCW 42.24.035, such individual or entity other than central stores rendering such services shall make a cash deposit or furnish surety bond coverage to the state as shall be fixed in an amount by law, or if not fixed by law, then in such amounts as shall be fixed by the director of the department of general administration but in no case shall such required cash deposit or surety bond be less than an amount which will fully indemnify the state against any and all losses on account of breach of promise to fully perform such services. No payments shall be made in advance for any equipment maintenance services to be performed more than three months after such payment. Any such bond so furnished shall be conditioned that the person, firm or corporation receiving the advance payment will apply it toward performance of the contract. The responsibility for recovery of erroneous or improper payments made under this section shall lie with the agency head or the agency head's designee in accordance with regulations issued pursuant to this chapter. Nothing in this section shall be construed to permit a public body to advance funds to a private service provider pursuant to a grant or loan before services have been rendered or material furnished.

(6) The state auditor shall:

(a) Report to the legislature the results of current post audits that have been made of the financial transactions of each agency; to this end the auditor may, in the auditor's discretion, examine the books and accounts of any agency, official, or employee charged with the receipt, custody, or safekeeping of public funds. Where feasible in conducting examinations, the auditor shall utilize data and findings from the internal control system prescribed by the office of financial management. The current post audit of each agency may include a section on recommendations to the legislature as provided in (c) of this subsection.

(b) Give information to the legislature, whenever required, upon any subject relating to the financial affairs of the state.

(c) Make the auditor's official report on or before the thirty-first of December which precedes the meeting of the legislature. The report shall be for the last



complete fiscal period and shall include determinations as to whether agencies, in making expenditures, complied with the laws of this state. The state auditor is authorized to perform or participate in performance verifications and performance audits as expressly authorized by the legislature in the omnibus biennial appropriations acts or in the performance audit work plan approved by the joint legislative audit and review committee. The state auditor, upon completing an audit for legal and financial compliance under chapter 43.09 RCW or a performance verification, may report to the joint legislative audit and review committee or other appropriate committees of the legislature, in a manner prescribed by the joint legislative audit and review committee, on facts relating to the management or performance of governmental programs where such facts are discovered incidental to the legal and financial audit or performance verification. The auditor may make such a report to a legislative committee only if the auditor has determined that the agency has been given an opportunity and has failed to resolve the management or performance issues raised by the auditor. If the auditor makes a report to a legislative committee, the agency may submit to the committee a response to the report. This subsection (6) shall not be construed to authorize the auditor to allocate other than de minimis resources to performance audits except as expressly authorized in the appropriations acts or in the performance audit work plan. The results of a performance audit conducted by the state auditor that has been requested by the joint legislative audit and review committee must only be transmitted to the joint legislative audit and review committee.

(d) Be empowered to take exception to specific expenditures that have been incurred by any agency or to take exception to other practices related in any way to the agency's financial transactions and to cause such exceptions to be made a matter of public record, including disclosure to the agency concerned and to the director of financial management. It shall be the duty of the director of financial management to cause corrective action to be taken ~~((promptly))~~ within six months, such action to include, as appropriate, the withholding of funds as provided in RCW 43.88.110. The director of financial management shall annually report by December 31st the status of audit resolution to the appropriate committees of the legislature, the state auditor, and the attorney general. The director of financial management shall include in the audit resolution report actions taken as a result of an audit including, but not limited to, types of personnel actions, costs and types of litigation, and value of recouped goods or services.

(e) Promptly report any irregularities to the attorney general.

(f) Investigate improper governmental activity under chapter 42.40 RCW.

(7) The joint legislative audit and review committee may:

(a) Make post audits of the financial transactions of any agency and management surveys and program reviews as provided for in chapter 44.28 RCW as well as performance audits and program evaluations. To this end the joint

committee may in its discretion examine the books, accounts, and other records of any agency, official, or employee.

(b) Give information to the legislature or any legislative committee whenever required upon any subject relating to the performance and management of state agencies.

(c) Make a report to the legislature which shall include at least the following:

(i) Determinations as to the extent to which agencies in making expenditures have complied with the will of the legislature and in this connection, may take exception to specific expenditures or financial practices of any agencies; and

(ii) Such plans as it deems expedient for the support of the state's credit, for lessening expenditures, for promoting frugality and economy in agency affairs, and generally for an improved level of fiscal management.

Passed the House March 7, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

## CHAPTER 136

[Substitute House Bill 1867]

### FOOD AND BEVERAGE SERVICE WORKER PERMITS—FOOD SAFETY

AN ACT Relating to food and beverage service worker permits; amending RCW 69.06.010, 69.06.020, 69.06.030, and 69.06.050; adding a new section to chapter 69.06 RCW; and providing an effective date.

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

**Sec. 1.** RCW 69.06.010 and 1987 c 223 s 5 are each amended to read as follows:

It shall be unlawful for any person to be employed in the handling of unwrapped or unpackaged food unless he or she shall furnish and place on file with the person in charge of such establishment, a food and beverage service worker's permit, as prescribed by the state board of health. Such permit shall be kept on file by the employer or kept by the employee on his or her person and open for inspection at all reasonable hours by authorized public health officials. Such permit shall be returned to the employee upon termination of employment. Initial permits, including limited duty permits, shall be valid for two years from the date of issuance. Subsequent renewal permits shall be valid for ~~((five))~~ three years from the date of issuance, except an employee may be granted a renewal permit that is valid for five years from the date of issuance if the employee demonstrates that he or she has obtained additional food safety training prior to renewal of the permit. Rules establishing minimum training requirements must be adopted by the state board of health and developed by the department of health in conjunction with local health jurisdictions and representatives of the food service industry.

NEW SECTION. Sec. 2. A new section is added to chapter 69.06 RCW to read as follows:

The local health officer may issue a limited duty permit when necessary to reasonably accommodate a person with a disability. The limited duty permit must specify the activities that the permit holder may perform, and must include only activities having low public health risk.

Sec. 3. RCW 69.06.020 and 1987 c 223 s 6 are each amended to read as follows:

The permit provided in RCW 69.06.010 or section 2 of this act shall be valid in every city, town and county in the state, for the period for which it is issued, and no other health certificate shall be required of such employees by any municipal corporation or political subdivision of the state. The cost of the permit shall be uniform throughout the state and shall be in that amount set by the state board of health. The cost of the permit shall reflect actual costs of food worker training and education, administration of the program, and testing of applicants. The state board of health shall periodically review the costs associated with the permit program and adjust the fee accordingly. The board shall also ensure that the fee is not set at an amount that would prohibit low-income persons from obtaining permits.

Sec. 4. RCW 69.06.030 and 1957 c 197 s 3 are each amended to read as follows:

It shall be unlawful for any person afflicted with any contagious or infectious disease that may be transmitted by food or beverage to work in or about any place where unwrapped or unpackaged food and/or beverage products are prepared or sold, or offered for sale for human consumption and it shall be unlawful for any person knowingly to employ a person so afflicted. Nothing in this section eliminates any authority or requirement to control or suppress communicable diseases pursuant to chapter 70.05 RCW and RCW 43.20.050(2)(e).

Sec. 5. RCW 69.06.050 and 1957 c 197 s 5 are each amended to read as follows:

Individuals under this chapter (~~(shall have thirty days from commencement of employment to secure health permits)~~) must obtain a food and beverage service workers' permit within fourteen days from commencement of employment. Individuals under this chapter may work for up to fourteen calendar days without a food and beverage service workers' permit, provided that they receive information or training regarding safe food handling practices from the employer prior to commencement of employment. Documentation that the information or training has been provided to the individual must be kept on file by the employer.

NEW SECTION. Sec. 6. Section 1 of this act takes effect July 1, 1999.

Passed the House March 9, 1998.

Passed the Senate March 2, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

## CHAPTER 137

[Engrossed Substitute House Bill 2313]

### ELEVATORS AND OTHER CONVEYANCES—ENFORCEMENT

AN ACT Relating to enforcement of the elevator and other conveyances law; amending RCW 70.87.010, 70.87.030, 70.87.090, and 70.87.120; adding a new section to chapter 70.87 RCW; and prescribing penalties.

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

**Sec. 1.** RCW 70.87.010 and 1997 c 216 s 1 are each amended to read as follows:

For the purposes of this chapter, except where a different interpretation is required by the context:

(1) "Owner" means any person having title to or control of a conveyance, as guardian, trustee, lessee, or otherwise;

(2) "Conveyance" means an elevator, escalator, dumbwaiter, belt manlift, automobile parking elevator, ~~((or))~~ moving walk, ~~((and))~~ and other elevating devices, as defined in this section;

(3) "Existing installations" means all conveyances for which plans were completed and accepted by the owner, or for which the plans and specifications have been filed with and approved by the department before June 13, 1963, and work on the erection of which was begun not more than twelve months thereafter;

(4) "Elevator" means a hoisting or lowering machine equipped with a car or platform that moves in guides and serves two or more floors or landings of a building or structure;

(a) "Passenger elevator" means an elevator (i) on which passengers are permitted to ride and (ii) that may be used to carry freight or materials when the load carried does not exceed the capacity of the elevator;

(b) "Freight elevator" means an elevator (i) used primarily for carrying freight and (ii) on which only the operator, the persons necessary for loading and unloading, and other employees approved by the department are permitted to ride;

(c) "Sidewalk elevator" means a freight elevator that: (i) Operates between a sidewalk or other area outside the building and floor levels inside the building below the outside area, (ii) has no landing opening into the building at its upper limit of travel, and (iii) is not used to carry automobiles;

(d) "Hand elevator" means an elevator utilizing manual energy to move the car;

(e) "Inclined elevator" means an elevator that travels at an angle of inclination of seventy degrees or less from the horizontal;

(f) "Multideck elevator" means an elevator having two or more compartments located one immediately above the other;

(g) "Observation elevator" means an elevator designed to permit exterior viewing by passengers while the car is traveling;

(h) "Power elevator" means an elevator utilizing energy other than gravitational or manual to move the car;

(i) "Electric elevator" means an elevator where the energy is applied by means of an electric driving machine;

(j) "Hydraulic elevator" means an elevator where the energy is applied by means of a liquid under pressure in a cylinder equipped with a plunger or piston;

(k) "Direct-plunger hydraulic elevator" means a hydraulic elevator having a plunger or cylinder directly attached to the car frame or platform;

(l) "Electro-hydraulic elevator" means a direct-plunger elevator where liquid is pumped under pressure directly into the cylinder by a pump driven by an electric motor;

(m) "Maintained-pressure hydraulic elevator" means a direct-plunger elevator where liquid under pressure is available at all times for transfer into the cylinder;

(n) "Roped hydraulic elevator" means a hydraulic elevator having its plunger or piston connected to the car with wire ropes or indirectly coupled to the car by means of wire ropes and sheaves;

(o) "Rack and pinion elevator" means a power elevator, with or without a counterweight, that is supported, raised, and lowered by a motor or motors that drive a pinion or pinions on a stationary rack mounted in the hoistway;

(p) "Screw column elevator" means a power elevator having an uncounterweighted car that is supported, raised, and lowered by means of a screw thread;

(q) "Rooftop elevator" means a power passenger or freight elevator that operates between a landing at roof level and one landing below and opens onto the exterior roof level of a building through a horizontal opening;

(r) "Special purpose personnel elevator" means an elevator that is limited in size, capacity, and speed, and permanently installed in structures such as grain elevators, radio antenna, bridge towers, underground facilities, dams, power plants, and similar structures to provide vertical transportation of authorized personnel and their tools and equipment only;

(s) "Workmen's construction elevator" means an elevator that is not part of the permanent structure of a building and is used to raise and lower workers and other persons connected with, or related to, the building project;

(t) "Boat launching elevator" means an elevator, as defined by subsections (2) and (4) of this section, that serves a boat launching structure and a beach or water surface and is used for the carrying or handling of boats in which people ride;

(u) "Limited-use/limited-application elevator" means a power passenger elevator where the use and application is limited by size, capacity, speed, and rise.

intended principally to provide vertical transportation for people with physical disabilities;

(5) "Escalator" means a power-driven, inclined, continuous stairway used for raising and lowering passengers;

(6) "Dumbwaiter" means a hoisting and lowering mechanism equipped with a car (a) that moves in guides in a substantially vertical direction, (b) the floor area of which does not exceed nine square feet, (c) the inside height of which does not exceed four feet, (d) the capacity of which does not exceed five hundred pounds, and (e) that is used exclusively for carrying materials;

(7) "Automobile parking elevator" means an elevator: (a) Located in either a stationary or horizontally moving hoistway; (b) used exclusively for parking automobiles where, during the parking process, each automobile is moved either under its own power or by means of a power-driven transfer device onto and off the elevator directly into parking spaces or cubicles in line with the elevator; and (c) in which no persons are normally stationed on any level except the receiving level;

(8) "Moving walk" means a passenger carrying device (a) on which passengers stand or walk and (b) on which the passenger carrying surface remains parallel to its direction of motion;

(9) "Belt manlift" means a power driven endless belt provided with steps or platforms and a hand hold for the transportation of personnel from floor to floor;

(10) "Department" means the department of labor and industries;

(11) "Director" means the director of the department or his or her representative;

(12) "Inspector" means an elevator inspector of the department or an elevator inspector of a municipality having in effect an elevator ordinance pursuant to RCW 70.87.200;

(13) "Permit" means a permit issued by the department to construct, install, or operate a conveyance;

(14) "Person" means this state, a political subdivision, any public or private corporation, any firm, or any other entity as well as an individual;

(15) "One-man capacity manlift" means a single passenger, hand-powered counterweighted device, or electric-powered device, that travels vertically in guides and serves two or more landings;

(16) "Private residence conveyance" means a conveyance installed in or on the premises of a single-family dwelling and operated for transporting persons or property from one elevation to another;

(17) "Material hoist" means a hoist that is not a part of a permanent structure used to raise or lower materials during construction, alteration, or demolition. It is not applicable to the temporary use of permanently installed personnel elevators as material hoist;

(18) "Material lift" means a lift that (a) is permanently installed, (b) is comprised of a car or platform that moves in guides, (c) serves two or more floors or landings, (d) travels in a vertical or inclined position, (e) is an isolated, self-

contained lift, (f) is not part of a conveying system, and (g) is installed in a commercial or industrial area not accessible to the general public or intended to be operated by the general public;

(19) "Casket lift" means a lift that (a) is installed at a mortuary, (b) is designed exclusively for carrying of caskets, (c) moves in guides in a basically vertical direction, and (d) serves two or more floors or landings;

(20) "Wheelchair lift" means a lift that travels in a vertical or inclined direction and is designed for use by physically handicapped persons;

(21) "Stairway chair lift" means a lift that travels in a basically inclined direction and is designed for use by physically handicapped persons;

(22) "Personnel hoist" means a hoist that is not a part of a permanent structure, is installed inside or outside buildings during construction, alteration, or demolition, and used to raise or lower workers and other persons connected with, or related to, the building project. The hoist may also be used for transportation of materials.

Sec. 2. RCW 70.87.030 and 1994 c 164 s 28 are each amended to read as follows:

~~((The department shall administer this chapter through the supervisor of building and construction safety inspection services. However, except for the new construction thereof, all hand-powered elevators, belt manlifts, and one-man capacity manlifts installed in or on grain elevators are the responsibility of the supervisor of industrial safety and health of the department.))~~ The department shall adopt rules governing the mechanical and electrical operation, erection, installation, alterations, inspection, acceptance tests, and repair of conveyances that are necessary and appropriate and shall also adopt minimum standards governing existing installations. In the execution of this rule-making power and before the adoption of rules, the department shall consider the rules for the safe mechanical operation, erection, installation, alteration, inspection, and repair of conveyances, including the American National Standards Institute Safety Code for Personnel and Material Hoists, the American Society of Mechanical Engineers Safety Code for Elevators, Dumbwaiters, and Escalators, and any amendatory or supplemental provisions thereto. The department by rule shall establish a schedule of fees to pay the costs incurred by the department for the work related to administration and enforcement of this chapter. Nothing in this chapter limits the authority of the department to prescribe or enforce general or special safety orders as provided by law.

Sec. 3. RCW 70.87.090 and 1983 c 123 s 9 are each amended to read as follows:

(1) An operating permit is required for each conveyance operated in the state of Washington except during its erection by the person or firm responsible for its installation. A permit issued by the department shall be kept conspicuously posted near the conveyance.

(2) The department may permit the temporary use of a conveyance during its installation or alteration, under the authority of a limited permit issued by the department for each class of service. Limited permits shall be issued for a period not to exceed thirty days and may be renewed at the discretion of the department. This limited-use permit is to provide transportation for construction personnel, tools, and materials only. Where a limited permit is issued, a notice bearing the information that the equipment has not been finally approved shall be conspicuously posted.

Sec. 4. RCW 70.87.120 and 1997 c 216 s 2 are each amended to read as follows:

(1) The department shall appoint and employ inspectors, as may be necessary to carry out the provisions of this chapter, under the provisions of the rules adopted by the Washington personnel resources board in accordance with chapter 41.06 RCW.

(2)(a) Except as provided in (b) of this subsection, the department shall cause all conveyances to be inspected and tested at least once each year. Inspectors have the right during reasonable hours to enter into and upon any building or premises in the discharge of their official duties, for the purpose of making any inspection or testing any conveyance contained thereon or therein. Inspections and tests shall conform with the rules adopted by the department. The department shall inspect all installations before it issues any initial permit for operation. Permits shall not be issued until the fees required by this chapter have been paid.

(b)(i) Private residence conveyances operated exclusively for single-family use shall be inspected and tested only when required under RCW 70.87.100 or as necessary for the purposes of subsection (4) of this section and shall be exempt from RCW 70.87.090 unless an annual inspection and operating permit are requested by the owner.

(ii) The department may perform additional inspections of a private residence conveyance at the request of the owner of the conveyance. Fees for these inspections shall be in accordance with the schedule of fees adopted for operating permits pursuant to RCW 70.87.030. An inspection requested under this subsection (2)(b)(ii) shall not be performed until the required fees have been paid.

(3) If inspection shows a conveyance to be in an unsafe condition, the department shall issue an inspection report in writing requiring the repairs or alterations to be made to the conveyance that are necessary to render it safe and may also suspend or revoke a permit pursuant to RCW 70.87.125 or order the operation of a conveyance discontinued pursuant to RCW 70.87.145.

(a) A penalty may be assessed under RCW 70.87.185 for failure to correct a violation within ninety days after the owner is notified in writing of inspection results.

(b) The owner may be assessed a penalty under RCW 70.87.185 for failure to submit official notification in writing to the department that all corrections have been completed.



(4) The department may investigate accidents and alleged or apparent violations of this chapter.

**\*NEW SECTION.** *Sec. 5. A new section is added to chapter 70.87 RCW to read as follows:*

*Any fee authorized under this chapter shall not be newly imposed or increased without prior legislative approval.*

\*Sec. 5 was vetoed. See message at end of chapter.

Passed the House February 2, 1998.

Passed the Senate March 10, 1998.

Approved by the Governor March 25, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 25, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 5, Engrossed Substitute House Bill No. 2313 entitled:

"AN ACT Relating to enforcement of the elevator and other conveyances law;"

This bill assures uniform enforcement of safety standards for the wide variety of elevators and other conveyances used by the public. It will enhance both public and worker safety.

However, section 5 of ESHB 2313 would prohibit the Department of Labor and Industries from imposing new fees or increasing fees for the elevator inspection program without prior legislative approval, even when necessary to maintain the solvency of the program. Such a requirement would cause delays that could jeopardize public safety and is unnecessary. The Legislature has included a proviso in the budget which limits expenditures of the elevator program to a level that does not exceed the revenues generated by the program. Furthermore, the department is already restricted by Initiative 601 as to the amount the fees can be increased.

For these reasons, I have vetoed section 5 of Engrossed Substitute House Bill No. 2313.

With the exception of section 5, I am approving Engrossed Substitute House Bill No. 2313."

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## CHAPTER 138

[Substitute House Bill 2351]

### INCLUDING VICTIMS OF SEXUAL ASSAULT IN THE ADDRESS CONFIDENTIALITY PROGRAM

AN ACT Relating to the address confidentiality program; amending RCW 40.24.010, 40.24.030, 40.24.070, and 40.24.080; and repealing RCW 40.24.900.

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

**Sec. 1.** RCW 40.24.010 and 1991 c 23 s 1 are each amended to read as follows:

The legislature finds that persons attempting to escape from actual or threatened domestic violence or sexual assault frequently establish new addresses in order to prevent their assailants or probable assailants from finding them. The purpose of this chapter is to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence

or sexual assault, to enable interagency cooperation with the secretary of state in providing address confidentiality for victims of domestic violence or sexual assault, and to enable state and local agencies to accept a program participant's use of an address designated by the secretary of state as a substitute mailing address.

**Sec. 2.** RCW 40.24.030 and 1991 c 23 s 3 are each amended to read as follows:

(1) An adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, as defined in RCW 11.88.010, may apply to the secretary of state to have an address designated by the secretary of state serve as the person's address or the address of the minor or incapacitated person. The secretary of state shall approve an application if it is filed in the manner and on the form prescribed by the secretary of state and if it contains:

(a) A sworn statement by the applicant that the applicant has good reason to believe (i) that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence or sexual assault; and (ii) that the applicant fears for his or her safety or his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made;

(b) A designation of the secretary of state as agent for purposes of service of process and for the purpose of receipt of mail;

(c) The mailing address where the applicant can be contacted by the secretary of state, and the phone number or numbers where the applicant can be called by the secretary of state;

(d) The new address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of domestic violence or sexual assault;

(e) The signature of the applicant and of any individual or representative of any office designated in writing under RCW 40.24.080 who assisted in the preparation of the application, and the date on which the applicant signed the application.

(2) Applications shall be filed with the office of the secretary of state.

(3) Upon filing a properly completed application, the secretary of state shall certify the applicant as a program participant. Applicants shall be certified for four years following the date of filing unless the certification is withdrawn or invalidated before that date. The secretary of state shall by rule establish a renewal procedure.

(4) A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's children or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application, shall be punishable under RCW 40.16.030 or other applicable statutes.

**Sec. 3.** RCW 40.24.070 and 1991 c 23 s 7 are each amended to read as follows:

The secretary of state may not make any records in a program participant's ~~((address, other than the address designated by the secretary of state,))~~ file available for inspection or copying, other than the address designated by the secretary of state, except under the following circumstances:

(1) If requested by a law enforcement agency, to the law enforcement agency;

(2) If directed by a court order, to a person identified in the order; ~~((and))~~

(3) If certification has been canceled; or

(4) To verify the participation of a specific program participant, in which case the secretary may only confirm information supplied by the requester.

**Sec. 4.** RCW 40.24.080 and 1991 c 23 s 8 are each amended to read as follows:

The secretary of state shall designate state and local agencies and nonprofit agencies that provide counseling and shelter services to either victims of domestic violence or sexual assault to assist persons applying to be program participants. Any assistance and counseling rendered by the office of the secretary of state or its designees to applicants shall in no way be construed as legal advice.

NEW SECTION. **Sec. 5.** RCW 40.24.900 and 1991 c 23 s 16 are each repealed.

Passed the House March 7, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

## CHAPTER 139

[Substitute House Bill 2368]

### REGISTRATION OF SEX OFFENDERS AND KIDNAPPERS FOR SECURITY PURPOSES AT INSTITUTIONS OF HIGHER LEARNING

AN ACT Relating to security on campuses of institutions of higher education; reenacting and amending RCW 9A.44.130; and adding a new section to chapter 9A.44 RCW.

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

**Sec. 1.** RCW 9A.44.130 and 1997 c 340 s 3 and 1997 c 113 s 3 are each reenacted and amended to read as follows:

(1) Any adult or juvenile residing in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense or kidnapping offense, shall register with the county sheriff for the county of the person's residence. In addition, any such adult or juvenile who is admitted to a public or private institution of higher education shall, within ten days of enrolling or by the first business day after arriving at the

institution, whichever is earlier, notify the sheriff for the county of the person's residence of the person's intent to attend the institution. Persons required to register under this section who are enrolled in a public or private institution of higher education on the effective date of this act must notify the county sheriff immediately. The sheriff shall notify the institution's department of public safety and shall provide that department with the same information provided to a county sheriff under subsection (3) of this section.

(2) This section may not be construed to confer any powers pursuant to RCW 4.24.500 upon the public safety department of any public or private institution of higher education.

(3) The person shall provide the county sheriff with the following information when registering: (a) Name; (b) address; (c) date and place of birth; (d) place of employment; (e) crime for which convicted; (f) date and place of conviction; (g) aliases used; and (h) social security number.

((3)) (4)(a) Offenders shall register with the county sheriff within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses or kidnapping offenses:

(i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) kidnapping offenders who on or after July 27, 1997, are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register. Failure to register within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection ((7)) (8) of this section.

(ii) OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender

who was required to register under this subsection (~~((3))~~) (4)(a)(ii) as of July 28, 1991, or a kidnapping offender required to register as of July 27, 1997, shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iii) **OFFENDERS UNDER FEDERAL JURISDICTION.** Sex offenders who, on or after July 23, 1995, and kidnapping offenders who, on or after July 27, 1997, as a result of that offense are in the custody of the United States bureau of prisons or other federal or military correctional agency for sex offenses committed before, on, or after February 28, 1990, or kidnapping offenses committed on, before, or after July 27, 1997, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. Sex offenders who, on July 23, 1995, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (~~((3))~~) (4)(a)(iii) as of July 23, 1995, or a kidnapping offender required to register as of July 27, 1997 shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iv) **OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED.** Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, and kidnapping offenders who are convicted on or after July 27, 1997, for a kidnapping offense that was committed on or after July 27, 1997, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the county sheriff to register immediately upon completion of being sentenced.

(v) **OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS.** Sex offenders and kidnapping offenders who move to Washington state from another state or a foreign country that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within thirty days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after February 28, 1990, and to kidnapping offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses

committed on or after July 27, 1997. Sex offenders and kidnapping offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY.

Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of (A) committing a sex offense on, before, or after February 28, 1990, and who, on or after July 23, 1995, is in custody, as a result of that finding, of the state department of social and health services, or (B) committing a kidnapping offense on, before, or after July 27, 1997, and who on or after July 27, 1997, is in custody, as a result of that finding, of the state department of social and health services, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before July 27, 1997, shall be required to register within twenty-four hours of receiving notice of this registration requirement. The state department of social and health services shall make reasonable attempts within available resources to notify sex offenders who were released before July 23, 1995, and kidnapping offenders who were released before July 27, 1997. Failure to register within twenty-four hours of release, or of receiving notice, constitutes a violation of this section and is punishable as provided in subsection ~~((7))~~ (8) of this section.

(b) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection ~~((7))~~ (8) of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

~~((4))~~ (5)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff at least fourteen days before moving. If any person required to register pursuant to this section moves to a new county, the person must send written notice of the change of address at least fourteen days before moving to the county sheriff in the new county of residence and must register with that county sheriff within twenty-four hours of moving. The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered. If any person required to register pursuant to this section moves out of Washington state, the person must also send written notice within ten days of moving to the new state or a foreign country to the county sheriff with whom the person last registered in Washington state.

(b) It is an affirmative defense to a charge that the person failed to send a notice at least fourteen days in advance of moving as required under (a) of this subsection that the person did not know the location of his or her new residence at least fourteen days before moving. The defendant must establish the defense by a preponderance of the evidence and, to prevail on the defense, must also prove by a preponderance that the defendant sent the required notice within twenty-four hours of determining the new address.

~~((5))~~ (6) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

~~((6))~~ (7) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330:

(a) "Sex offense" means any offense defined as a sex offense by RCW 9.94A.030 and any violation of RCW 9.68A.040 (sexual exploitation of a minor), 9.68A.050 (dealing in depictions of minor engaged in sexually explicit conduct), 9.68A.060 (sending, bringing into state depictions of minor engaged in sexually explicit conduct), 9.68A.090 (communication with minor for immoral purposes), 9.68A.100 (patronizing juvenile prostitute), or 9A.44.096 (sexual misconduct with a minor in the second degree), as well as any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030.

(b) "Kidnapping offense" means the crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent.

~~((7))~~ (8) A person who knowingly fails to register with the county sheriff or ~~((who moves without notifying))~~ notify the county sheriff as required by this section is guilty of a class C felony if the crime for which the individual was

convicted was a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony. If the crime was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony, violation of this section is a gross misdemeanor.

**NEW SECTION. Sec. 2.** A new section is added to chapter 9A.44 RCW to read as follows:

The state patrol shall notify registered sex and kidnapping offenders of any change to the registration requirements.

Passed the House March 7, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

## CHAPTER 140

[Substitute House Bill 2459]

### PUBLIC HOUSING AUTHORITIES—REGULATIONS FOR LARGER JURISDICTIONS

AN ACT Relating to public housing authorities in jurisdictions with populations over four hundred thousand; amending RCW 35.82.040 and 35.82.050; and adding a new section to chapter 35.82 RCW.

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

**Sec. 1.** RCW 35.82.040 and 1995 c 293 s 1 are each amended to read as follows:

Except as provided in section 2 of this act, when the governing body of a city adopts a resolution declaring that there is a need for a housing authority, it shall promptly notify the mayor of such adoption. Upon receiving such notice, the mayor shall appoint five persons as commissioners of the authority created for the city. When the governing body of a county adopts a resolution declaring that there is a need for a housing authority, it shall appoint five persons as commissioners of the authority created for the county. The commissioners who are first appointed shall be designated to serve for terms of one, two, three, four and five years, respectively, from the date of their appointment, but thereafter commissioners shall be appointed for a term of office of five years except that all vacancies shall be filled for the unexpired term. No commissioner of an authority may be an officer or employee of the city or county for which the authority is created, unless the commissioner is an employee of a separately elected county official other than the county governing body in a county with a population of less than one hundred seventy-five thousand as of the 1990 federal census, and the total government employment in that county exceeds forty percent of total employment. A commissioner shall hold office until a successor has been appointed and has qualified, unless sooner removed according to this chapter. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk and such certificate shall be conclusive evidence of the due and



proper appointment of such commissioner. A commissioner shall receive no compensation for his or her services for the authority, in any capacity, but he or she shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his or her duties.

The powers of each authority shall be vested in the commissioners thereof in office from time to time. Except as provided in section 2 of this act, three commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present, unless in any case the bylaws of the authority shall require a larger number. The mayor (or in the case of an authority for a county, the governing body of the county) shall designate which of the commissioners appointed shall be the first chair of the commission and he or she shall serve in the capacity of chair until the expiration of his or her term of office as commissioner. When the office of the chair of the authority becomes vacant, the authority shall select a chair from among its commissioners. An authority shall select from among its commissioners a vice-chair, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. For such legal services as it may require, an authority may call upon the chief law officer of the city or the county or may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

NEW SECTION. Sec. 2. A new section is added to chapter 35.82 RCW to read as follows:

(1) After the effective date of this section, the governing body of a city with a population of four hundred thousand or more, that has created a housing authority under RCW 35.82.040, shall adopt a resolution to expand the number of commissioners on the housing authority from five to seven. Upon receiving the notice, the mayor, with approval of the city council, shall appoint additional persons as commissioners of the authority created for the city.

(2) In appointing commissioners, the mayor shall consider persons that represent the community, provided that two commissioners shall consist of tenants that reside in a housing project that is owned by the housing authority.

(3) After the effective date of this section, all commissioners shall be appointed to serve four-year terms, except that all vacancies shall be filled for the remainder of the unexpired term. A commissioner of an authority may not be an officer or employee of the city for which the authority is created. A commissioner shall hold office until a successor has been appointed and has qualified, unless sooner removed according to this chapter.

(4) A commissioner may be reappointed only after review and approval by the city council.

(5) A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk and the certificate is conclusive evidence of the due and proper appointment of the commissioner.

(6) A commissioner shall receive no compensation for his or her services for the authority, in any capacity, but he or she is entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his or her duties.

(7) The powers of each authority vest in the commissioners of the authority in office from time to time. Four commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present, unless in any case the bylaws of the authority shall require a larger number.

(8) The mayor, with consent of the city council, shall designate which of the commissioners appointed shall be the first chair of the commission and he or she shall serve in the capacity of chair until the expiration of his or her term of office as commissioner. When the office of the chair of the authority becomes vacant, the authority shall select a chair from among its commissioners. An authority shall select from among its commissioners a vice-chair, and the authority may employ a secretary, who shall be executive director, technical experts and such other officers, agents, and employees, permanent and temporary, as the authority requires, and shall determine their qualifications, duties, and compensation.

(9) For such legal services as it may require, an authority may call upon the chief law officer of the city or may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

**Sec. 3.** RCW 35.82.050 and 1965 c 7 s 35.82.050 are each amended to read as follows:

(1) No commissioner ((or), employee ((of an authority)), or appointee to any decision-making body for the housing authority shall ((acquire any interest direct or indirect in any housing project or in any property included or planned to be included in any project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project)) own or hold an interest in any contract or property or engage in any business, transaction, or professional or personal activity, that would:

(a) Be, or appear to be, in conflict with the commissioner's, employee's, or appointee's official duties to any decision-making body for the housing authority duties relating to the housing authority served by or subject to the authority of such commissioner, employee, or appointee to any decision-making body for the housing authority;

(b) Secure, or appear to secure, unwarranted privileges or advantages for such commissioner, employee, or appointee to any decision-making body for the housing authority, or others; or

(c) Prejudice, or appear to prejudice, such commissioner's, employee's, or appointee's to any decision-making body for the housing authority independence of judgment in exercise of his or her official duties relating to the housing authority served by or subject to the authority of the commissioner, employee, or appointee to any decision-making body for the housing authority.

(2) No commissioner, employee, or appointee to any decision-making body for the housing authority shall act in an official capacity in any manner in which such commissioner, employee, or appointee to any decision-making body of the housing authority has a direct or indirect financial or personal involvement.

(3) No commissioner, employee, or appointee to any decision-making body for the housing authority shall use his or her public office or employment to secure financial gain to such commissioner, employee, or appointee to any decision-making body for the housing authority.

(4) If any commissioner or employee of an authority or any appointee to any decision-making body for the housing authority owns or controls an interest direct or indirect in any property included or planned to be included in any housing project, he immediately shall disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure ((to)) to disclose such interest shall constitute misconduct in office. Upon such disclosure such commissioner ((or)), employee, or appointee to any decision-making body for the housing authority shall not participate in any action by the authority affecting such property.

(5) No provision of this section shall preclude a tenant of the public housing authority from serving as a commissioner, employee, or appointee to any decision-making body of the housing authority. No provision of this section shall preclude a tenant of the public housing authority who is serving as a commissioner, employee, or appointee to any decision-making body of the housing authority from voting on any issue or decision, or participating in any action by the authority, unless a conflict of interest, as set forth in subsections (1) through (4) of this section, exists as to that particular tenant and the particular property or interest at issue before, or subject to action by the housing authority.

Passed the House March 11, 1998.

Passed the Senate March 10, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

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## CHAPTER 141

[House Bill 2558]

### DEPENDENT CHILDREN—TECHNICAL CORRECTIONS

AN ACT Relating to technical corrections to statutory references; and amending RCW 13.34.090 and 43.43.700.

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

**Sec. 1.** RCW 13.34.090 and 1990 c 246 s 4 are each amended to read as follows:

(1) Any party has a right to be represented by an attorney in all proceedings under this chapter, to introduce evidence, to be heard in his or her own behalf, to examine witnesses, to receive a decision based solely on the evidence adduced at the hearing, and to an unbiased fact-finder.

(2) At all stages of a proceeding in which a child is alleged to be dependent (~~(pursuant to)~~ as defined in RCW 13.34.030((2))) (4), the child's parent, guardian, or legal custodian has the right to be represented by counsel, and if indigent, to have counsel appointed for him or her by the court. Unless waived in court, counsel shall be provided to the child's parent, guardian, or legal custodian, if such person (a) has appeared in the proceeding or requested the court to appoint counsel and (b) is financially unable to obtain counsel because of indigency as defined in chapter 10.101 RCW.

(3) If a party to an action under this chapter is represented by counsel, no order shall be provided to that party for his or her signature without prior notice and provision of the order to counsel.

(4) Copies of department of social and health services or supervising agency records to which parents have legal access pursuant to chapter 13.50 RCW shall be given to the child's parent, guardian, legal custodian, or his or her legal counsel, within twenty days after the department or supervising agency receives a written request for such records from the parent, guardian, legal custodian, or his or her legal counsel. These records shall be provided to the child's parents, guardian, legal custodian, or legal counsel prior to the shelter care hearing in order to allow an opportunity to review the records prior to the hearing. These records shall be legible and shall be provided at no expense to the parents, guardian, legal custodian, or his or her counsel.

**Sec. 2.** RCW 43.43.700 and 1989 c 334 s 6 are each amended to read as follows:

There is hereby established within the Washington state patrol a section on identification, child abuse, vulnerable adult abuse, and criminal history hereafter referred to as the section.

In order to aid the administration of justice the section shall install systems for the identification of individuals, including the fingerprint system and such other systems as the chief deems necessary. The section shall keep a complete record and index of all information received in convenient form for consultation and comparison.

The section shall obtain from whatever source available and file for record the fingerprints, palmprints, photographs, or such other identification data as it deems necessary, of persons who have been or shall hereafter be lawfully arrested and charged with, or convicted of any criminal offense. The section may obtain like information concerning persons arrested for or convicted of crimes under the laws of another state or government.

The section shall also contain like information concerning persons, over the age of eighteen years, who have been found ~~((, pursuant to a dependency proceeding under RCW 13.34.030(2)(b) to have physically abused or sexually abused or exploited a child or, pursuant to a protection proceeding under chapter 74.34 RCW, to have abused or financially exploited a vulnerable adult))~~ to have physically abused or sexually abused or exploited a child pursuant to a dependency proceeding under chapter 13.34 RCW, or to have abused or financially exploited a vulnerable adult pursuant to a protection proceeding under chapter 74.34 RCW.

Passed the House March 9, 1998.

Passed the Senate February 23, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

## CHAPTER 142

[Substitute House Bill 2688]

### HEARING INSTRUMENT FITTERS AND DISTRIBUTORS—EDUCATIONAL REQUIREMENTS

AN ACT Relating to hearing instrument fitters and dispensers; amending RCW 18.35.010, 18.35.020, 18.35.040, 18.35.060, 18.35.090, 18.35.100, 18.35.105, 18.35.120, 18.35.140, 18.35.161, 18.35.172, 18.35.185, 18.35.190, 18.35.195, 18.35.205, 18.35.230, 18.35.240, 18.35.250, and 18.35.260; reenacting and amending RCW 18.35.110; and providing an effective date.

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

**Sec. 1.** RCW 18.35.010 and 1996 c 200 s 2 are each amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Assistive listening device or system" means an amplification system that is specifically designed to improve the signal to noise ratio for the listener, reduce interference from noise in the background, and enhance hearing levels at a distance by picking up sound from as close to source as possible and sending it directly to the ear of the listener, excluding hearing instruments as defined in this chapter.

(2) "Certified audiologist" means a person who is certified by the department to engage in the practice of audiology and meets the qualifications in this chapter.

(3) "Audiology" means the application of principles, methods, and procedures related to hearing and the disorders of hearing and to related language and speech disorders, whether of organic or nonorganic origin, peripheral or central, that impede the normal process of human communication including, but not limited to, disorders of auditory sensitivity, acuity, function, processing, or vestibular function, the application of aural habilitation, rehabilitation, and appropriate devices including fitting and dispensing of hearing instruments, and cerumen management to treat such disorders.

(4) "Board" means the board of hearing and speech.

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

(6) "Direct supervision" means that the supervisor is physically present and in the same room with the (~~hearing instrument fitter/dispenser~~) interim permit holder, observing the nondiagnostic testing, fitting, and dispensing activities (~~of the hearing instrument fitter/dispenser permit holder~~) at all times.

(7) "Establishment" means any permanent site housing a person engaging in the practice of fitting and dispensing of hearing instruments by a hearing instrument fitter/dispenser or audiologist; where the client can have personal contact and counsel during the firm's business hours; where business is conducted; and the address of which is given to the state for the purpose of bonding.

(8) "Facility" means any permanent site housing a person engaging in the practice of speech-language pathology and/or audiology, excluding the sale, lease, or rental of hearing instruments.

(9) "Fitting and dispensing of hearing instruments" means the sale, lease, or rental or attempted sale, lease, or rental of hearing instruments together with the selection and modification of hearing instruments and the administration of nondiagnostic tests as specified by RCW 18.35.110 and the use of procedures essential to the performance of these functions; and includes recommending specific hearing instrument systems, specific hearing instruments, or specific hearing instrument characteristics, the taking of impressions for ear molds for these purposes, the use of nondiagnostic procedures and equipment to verify the appropriateness of the hearing instrument fitting, and hearing instrument orientation. The fitting and dispensing of hearing instruments as defined by this chapter may be equally provided by a licensed hearing instrument fitter/dispenser or certified audiologist.

(10) "Good standing" means a licensed hearing instrument fitter/dispenser or certified audiologist or speech-language pathologist whose license or certificate has not been subject to sanctions pursuant to chapter 18.130 RCW or sanctions by other states, territories, or the District of Columbia in the last two years.

(11) "Hearing instrument" means any wearable prosthetic instrument or device designed for or represented as aiding, improving, compensating for, or correcting defective human hearing and any parts, attachments, or accessories of such an instrument or device, excluding batteries and cords, ear molds, and assistive listening devices.

(12) "Hearing instrument fitter/dispenser" means a person who is licensed to engage in the practice of fitting and dispensing of hearing instruments and meets the qualifications of this chapter.

(13) (~~"Hearing instrument fitter/dispenser"~~) "Interim permit holder" means a person who holds the permit created under RCW 18.35.060 and who practices under the direct supervision of a licensed hearing instrument fitter/dispenser or certified speech-language pathologist or certified audiologist.

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

(15) "Certified speech-language pathologist" means a person who is certified by the department to engage in the practice of speech-language pathology and meets the qualifications of this chapter.

(16) "Speech-language pathology" means the application of principles, methods, and procedures related to the development and disorders, whether of organic or nonorganic origin, that impede oral, pharyngeal, or laryngeal sensorimotor competencies and the normal process of human communication including, but not limited to, disorders and related disorders of speech, articulation, fluency, voice, verbal and written language, auditory comprehension, cognition/communication, and the application of augmentative communication treatment and devices for treatment of such disorders.

**Sec. 2.** RCW 18.35.020 and 1996 c 200 s 3 are each amended to read as follows:

No person shall engage in the fitting and dispensing of hearing instruments or imply or represent that he or she is engaged in the fitting and dispensing of hearing instruments unless he or she is a licensed hearing instrument fitter/dispenser or a certified audiologist or holds ~~((a hearing instrument fitter/dispenser permit or audiology))~~ an interim permit issued by the department as provided in this chapter and is an owner or employee of an establishment that is bonded as provided by RCW 18.35.240. The owner or manager of an establishment that dispenses hearing instruments is responsible under this chapter for all transactions made in the establishment name or conducted on its premises by agents or persons employed by the establishment engaged in fitting and dispensing of hearing instruments. Every establishment that fits and dispenses shall have in its employ at least one licensed hearing instrument fitter/dispenser or certified audiologist at all times, and shall annually submit proof that all testing equipment at that establishment that is required by the board to be calibrated has been properly calibrated.

**Sec. 3.** RCW 18.35.040 and 1996 c 200 s 5 are each amended to read as follows:

(1) An applicant for licensure as a hearing instrument fitter/dispenser must have the following minimum qualifications and shall pay a fee determined by the secretary as provided in RCW 43.70.250. An applicant shall be issued a license under the provisions of this chapter if the applicant:

(a)(i) Satisfactorily completes the hearing instrument fitter/dispenser examination required by this chapter; or

(ii) Holds a current, unsuspended, unrevoked license from another jurisdiction if the standards for licensing in such other jurisdiction are substantially equivalent to those prevailing in this state;

(b) ~~((After December 31, 1996, has at least six months of apprenticeship training that meets requirements established by the board. The board may waive part or all of the apprenticeship training in recognition of formal education in fitting and dispensing of hearing instruments or in recognition of previous licensure in Washington or in another state, territory, or the District of Columbia;~~

~~— (e) Is at least twenty-one years of age)) Satisfactorily completes a minimum of a two-year degree program in hearing instrument fitter/dispenser instruction. The program must be approved by the board; and~~

~~((#)) (c) Has not committed unprofessional conduct as specified by the uniform disciplinary act.~~

The applicant must present proof of qualifications to the board in the manner and on forms prescribed by the secretary and proof of completion of a minimum of four clock hours of AIDS education and training pursuant to rules adopted by the board.

(2) An applicant for certification as a speech-language pathologist or audiologist must have the following minimum qualifications:

(a) Has not committed unprofessional conduct as specified by the uniform disciplinary act;

(b) Has a master's degree or the equivalent, or a doctorate degree or the equivalent, from a program at a board-approved institution of higher learning, which includes completion of a supervised clinical practicum experience as defined by rules adopted by the board; and

(c) Has completed postgraduate professional work experience approved by the board.

All qualified applicants must satisfactorily complete the speech-language pathology or audiology examinations required by this chapter.

The applicant must present proof of qualifications to the board in the manner and on forms prescribed by the secretary and proof of completion of a minimum of four clock hours of AIDS education and training pursuant to rules adopted by the board.

Sec. 4. RCW 18.35.060 and 1997 c 275 s 3 are each amended to read as follows:

~~((1) The department shall issue a hearing instrument fitting/dispensing permit to any applicant who has shown to the satisfaction of the department that the applicant:~~

~~— (a) Is at least twenty-one years of age;~~

~~— (b) If issued a hearing instrument fitter/dispenser permit, would be employed and directly supervised in the fitting and dispensing of hearing instruments by a person licensed or certified in good standing as a hearing instrument fitter/dispenser or audiologist for at least two years unless otherwise approved by the board;~~

~~— (c) Has complied with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280;~~

~~— (d) Has not committed unprofessional conduct as specified by the uniform disciplinary act; and~~

~~— (e) Is a high school graduate or the equivalent.~~

~~— The provisions of RCW 18.35.030, 18.35.110, and 18.35.120 shall apply to any person issued a hearing instrument fitter/dispenser permit. Pursuant to the provisions of this section, a person issued a hearing instrument fitter/dispenser~~



permit may engage in the fitting and dispensing of hearing instruments without having first passed the hearing instrument fitter/dispenser examination provided under this chapter.

—(2) The hearing instrument fitter/dispenser permit shall contain the names of the employer and the licensed or certified supervisor under this chapter who are employing and supervising the hearing instrument fitter/dispenser permit holder and those persons shall execute an acknowledgment of responsibility for all acts of the hearing instrument fitter/dispenser permit holder in connection with the fitting and dispensing of hearing instruments.

—(3) A hearing instrument fitter/dispenser permit holder may fit and dispense hearing instruments, but only if the hearing instrument fitter/dispenser permit holder is under the direct supervision of a licensed hearing instrument fitter/dispenser or certified audiologist under this chapter in a capacity other than as a hearing instrument fitter/dispenser permit holder. Direct supervision by a licensed hearing instrument fitter/dispenser or certified audiologist shall be required whenever the hearing instrument fitter/dispenser permit holder is engaged in the fitting or dispensing of hearing instruments during the hearing instrument fitter/dispenser permit holder's employment. The board shall develop and adopt guidelines on any additional supervision or training it deems necessary.

—(4) The hearing instrument fitter/dispenser permit expires one year from the date of its issuance except that on recommendation of the board the permit may be reissued for one additional year only.

—(5) No certified audiologist or licensed hearing instrument fitter/dispenser under this chapter may assume the responsibility for more than one hearing instrument fitter/dispenser permit holder at any one time.

—(6)) The department, upon approval by the board, shall issue an interim permit authorizing an applicant for speech-language pathologist certification or audiologist certification who, except for the postgraduate professional experience and the examination requirements, meets the academic and practicum requirements of RCW 18.35.040(2) to practice under ((interim permit)) direct supervision ((by a certified speech-language pathologist or certified audiologist)). The interim permit is valid for a period of one year from date of issuance. The board shall determine conditions for the interim permit.

Sec. 5. RCW 18.35.090 and 1997 c 275 s 5 are each amended to read as follows:

Each person who engages in practice under this chapter shall comply with administrative procedures and administrative requirements established under RCW 43.70.250 and 43.70.280 and shall keep the license, certificate, or interim permit conspicuously posted in the place of business at all times. The secretary may establish mandatory continuing education requirements and/or continued competency standards to be met by licensees or certificate or interim permit holders as a condition for license, certificate, or interim permit renewal.

**Sec. 6.** RCW 18.35.100 and 1996 c 200 s 13 are each amended to read as follows:

(1) Every hearing instrument fitter/dispenser, audiologist, speech-language pathologist, (~~hearing instrument fitter/dispenser permit holder,~~) or interim permit holder, who is regulated under this chapter, shall notify the department in writing of the regular address of the place or places in the state of Washington where the person practices or intends to practice more than twenty consecutive business days and of any change thereof within ten days of such change. Failure to notify the department in writing shall be grounds for suspension or revocation of the license, certificate, or interim permit.

(2) The department shall keep a record of the places of business of persons who hold licenses, certificates, or interim permits.

(3) Any notice required to be given by the department to a person who holds a license, certificate, or interim permit may be given by mailing it to the address of the last establishment or facility of which the person has notified the department, except that notice to a licensee or certificate or interim permit holder of proceedings to deny, suspend, or revoke the license, certificate, or interim permit shall be by certified or registered mail or by means authorized for service of process.

**Sec. 7.** RCW 18.35.105 and 1996 c 200 s 14 are each amended to read as follows:

Each licensee and certificate and interim permit holder under this chapter shall keep records of all services rendered for a minimum of three years. These records shall contain the names and addresses of all persons to whom services were provided. Hearing instrument fitter/dispensers, audiologists, and interim permit holders shall also record the date the hearing instrument warranty expires, a description of the services and the dates the services were provided, and copies of any contracts and receipts. All records, as required pursuant to this chapter or by rule, shall be owned by the establishment or facility and shall remain with the establishment or facility in the event the licensee or certificate holder changes employment. If a contract between the establishment or facility and the licensee or certificate holder provides that the records are to remain with the licensee or certificate holder, copies of such records shall be provided to the establishment or facility.

**Sec. 8.** RCW 18.35.110 and 1996 c 200 s 15 and 1996 c 178 s 1 are each reenacted and amended to read as follows:

In addition to causes specified under RCW 18.130.170 and 18.130.180, any person licensed or holding ((a)) an interim permit or certificate under this chapter may be subject to disciplinary action by the board for any of the following causes:

(1) For unethical conduct in dispensing hearing instruments. Unethical conduct shall include, but not be limited to:

(a) Using or causing or promoting the use of, in any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or

any other representation, however disseminated or published, which is false, misleading or deceptive;

(b) Failing or refusing to honor or to perform as represented any representation, promise, agreement, or warranty in connection with the promotion, sale, dispensing, or fitting of the hearing instrument;

(c) Advertising a particular model, type, or kind of hearing instrument for sale which purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing and where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type, or kind than that advertised;

(d) Falsifying hearing test or evaluation results;

(e)(i) Whenever any of the following conditions are found or should have been found to exist either from observations by the licensee or certificate or interim permit holder or on the basis of information furnished by the prospective hearing instrument user prior to fitting and dispensing a hearing instrument to any such prospective hearing instrument user, failing to advise that prospective hearing instrument user in writing that the user should first consult a licensed physician specializing in diseases of the ear or if no such licensed physician is available in the community then to any duly licensed physician:

(A) Visible congenital or traumatic deformity of the ear, including perforation of the eardrum;

(B) History of, or active drainage from the ear within the previous ninety days;

(C) History of sudden or rapidly progressive hearing loss within the previous ninety days;

(D) Acute or chronic dizziness;

(E) Any unilateral hearing loss;

(F) Significant air-bone gap when generally acceptable standards have been established as defined by the food and drug administration;

(G) Visible evidence of significant cerumen accumulation or a foreign body in the ear canal;

(H) Pain or discomfort in the ear; or

(I) Any other conditions that the board may by rule establish. It is a violation of this subsection for any licensee or certificate holder or that licensee's or certificate holder's employees and putative agents upon making such required referral for medical opinion to in any manner whatsoever disparage or discourage a prospective hearing instrument user from seeking such medical opinion prior to the fitting and dispensing of a hearing instrument. No such referral for medical opinion need be made by any licensed hearing instrument fitter/dispenser, certified audiologist, or interim permit holder in the instance of replacement only of a hearing instrument which has been lost or damaged beyond repair within twelve months of the date of purchase. The licensed hearing instrument fitter/dispenser, certified audiologist, or interim permit holder or their employees or putative agents shall obtain a signed statement from the hearing instrument user

documenting the waiver of medical clearance and the waiver shall inform the prospective user that signing the waiver is not in the user's best health interest: PROVIDED, That the licensed hearing instrument fitter/dispenser, certified audiologist, or interim permit holder shall maintain a copy of either the physician's statement showing that the prospective hearing instrument user has had a medical evaluation within the previous six months or the statement waiving medical evaluation, for a period of three years after the purchaser's receipt of a hearing instrument. Nothing in this section required to be performed by a licensee or certificate or interim permit holder shall mean that the licensee or certificate or interim permit holder is engaged in the diagnosis of illness or the practice of medicine or any other activity prohibited under the laws of this state;

(ii) Fitting and dispensing a hearing instrument to any person under eighteen years of age who has not been examined and cleared for hearing instrument use within the previous six months by a physician specializing in otolaryngology except in the case of replacement instruments or except in the case of the parents or guardian of such person refusing, for good cause, to seek medical opinion: PROVIDED, That should the parents or guardian of such person refuse, for good cause, to seek medical opinion, the licensed hearing instrument fitter/dispenser or certified audiologist shall obtain from such parents or guardian a certificate to that effect in a form as prescribed by the department;

(iii) Fitting and dispensing a hearing instrument to any person under eighteen years of age who has not been examined by an audiologist who holds at least a master's degree in audiology for recommendations during the previous six months, without first advising such person or his or her parents or guardian in writing that he or she should first consult an audiologist who holds at least a master's degree in audiology, except in cases of hearing instruments replaced within twelve months of their purchase;

(f) Representing that the services or advice of a person licensed to practice medicine and surgery under chapter 18.71 RCW or osteopathic medicine and surgery under chapter 18.57 RCW or of a clinical audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing instruments when that is not true, or using the word "doctor," "clinic," or other like words, abbreviations, or symbols which tend to connote a medical or osteopathic medicine and surgery profession when such use is not accurate;

(g) Permitting another to use his or her license, certificate, or interim permit;

(h) Stating or implying that the use of any hearing instrument will restore normal hearing, preserve hearing, prevent or retard progression of a hearing impairment, or any other false, misleading, or medically or audilogically unsupportable claim regarding the efficiency of a hearing instrument;

(i) Representing or implying that a hearing instrument is or will be "custom-made," "made to order," "prescription made," or in any other sense specially fabricated for an individual when that is not the case; or

(j) Directly or indirectly offering, giving, permitting, or causing to be given, money or anything of value to any person who advised another in a professional

capacity as an inducement to influence that person, or to have that person influence others to purchase or contract to purchase any product sold or offered for sale by the hearing instrument fitter/dispenser, audiologist, or interim permit holder, or to influence any person to refrain from dealing in the products of competitors.

(2) Engaging in any unfair or deceptive practice or unfair method of competition in trade within the meaning of RCW 19.86.020.

(3) Aiding or abetting any violation of the rebating laws as stated in chapter 19.68 RCW.

**Sec. 9.** RCW 18.35.120 and 1996 c 200 s 17 are each amended to read as follows:

A licensee or certificate or interim permit holder under this chapter may also be subject to disciplinary action if the licensee or certificate or interim permit holder:

(1) Is found guilty in any court of any crime involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or conspiracy to defraud and ten years have not elapsed since the date of the conviction; or

(2) Has a judgment entered against him or her in any civil action involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or conspiracy to defraud and five years have not elapsed since the date of the entry of the final judgment in the action, but a license or certificate shall not be issued unless the judgment debt has been discharged; or

(3) Has a judgment entered against him or her under chapter 19.86 RCW and two years have not elapsed since the entry of the final judgment; but a license or certificate shall not be issued unless there has been full compliance with the terms of such judgment, if any. The judgment shall not be grounds for denial, suspension, nonrenewal, or revocation of a license or certificate unless the judgment arises out of and is based on acts of the applicant, licensee, certificate holder, or employee of the licensee or certificate holder; or

(4) Commits unprofessional conduct as defined in RCW 18.130.180 of the uniform disciplinary act.

**Sec. 10.** RCW 18.35.140 and 1996 c 200 s 18 are each amended to read as follows:

The powers and duties of the department, in addition to the powers and duties provided under other sections of this chapter, are as follows:

(1) To provide space necessary to carry out the examination set forth in RCW 18.35.070 of applicants for hearing instrument fitter/dispenser licenses or audiology certification.

(2) To authorize all disbursements necessary to carry out the provisions of this chapter.

(3) To require the periodic examination of testing equipment, as defined by the board, and to carry out the periodic inspection of facilities or establishments

of persons who are licensed or certified under this chapter, as reasonably required within the discretion of the department.

(4) To appoint advisory committees as necessary.

(5) To keep a record of proceedings under this chapter and a register of all persons licensed, certified, or holding interim permits under this chapter. The register shall show the name of every living licensee or interim permit holder for hearing instrument fitting/dispensing, every living certificate or interim permit holder for speech-language pathology, every living certificate or interim permit holder for audiology, with his or her last known place of residence and the date and number of his or her license, interim permit, or certificate.

**Sec. 11.** RCW 18.35.161 and 1996 c 200 s 20 are each amended to read as follows:

The board shall have the following powers and duties:

(1) To establish by rule such minimum standards and procedures in the fitting and dispensing of hearing instruments as deemed appropriate and in the public interest;

~~(2) ((To develop guidelines on the training and supervision of hearing instrument fitter/dispenser permit holders and to establish requirements regarding the extent of apprenticeship training and certification to the department;~~

~~—(3))) To adopt any other rules necessary to implement this chapter and which are not inconsistent with it;~~

~~((4))) (3) To develop, approve, and administer or supervise the administration of examinations to applicants for licensure and certification under this chapter;~~

~~((5))) (4) To require a licensee or certificate or interim permit holder to make restitution to any individual injured by a violation of this chapter or chapter 18.130 RCW, the uniform disciplinary act. The authority to require restitution does not limit the board's authority to take other action deemed appropriate and provided for in this chapter or chapter 18.130 RCW;~~

~~((6))) (5) To pass upon the qualifications of applicants for licensure, certification, or interim permits and to certify to the secretary;~~

~~((7))) (6) To recommend requirements for continuing education and continuing competency requirements as a prerequisite to renewing a license or certificate under this chapter;~~

~~((8))) (7) To keep an official record of all its proceedings. The record is evidence of all proceedings of the board that are set forth in this record;~~

~~((9))) (8) To adopt rules, if the board finds it appropriate, in response to questions put to it by professional health associations, hearing instrument fitter/dispensers or audiologists, speech-language pathologists, interim permit holders, and consumers in this state; and~~

~~((10))) (9) To adopt rules relating to standards of care relating to hearing instrument fitter/dispensers or audiologists, including the dispensing of hearing instruments, and relating to speech-language pathologists, including dispensing of communication devices.~~

**Sec. 12.** RCW 18.35.172 and 1996 c 200 s 22 are each amended to read as follows:

The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, certificates, and interim permits, and the discipline of licensees and certificate and permit holders under this chapter.

**Sec. 13.** RCW 18.35.185 and 1996 c 200 s 25 are each amended to read as follows:

(1) In addition to any other rights and remedies a purchaser may have, the purchaser of a hearing instrument shall have the right to rescind the transaction for other than the licensed hearing instrument fitter/dispenser, certified audiologist, or interim permit holder's breach if:

(a) The purchaser, for reasonable cause, returns the hearing instrument or holds it at the licensed hearing instrument fitter/dispenser, certified audiologist, or interim permit holder's disposal, if the hearing instrument is in its original condition less normal wear and tear. "Reasonable cause" shall be defined by the board but shall not include a mere change of mind on the part of the purchaser or a change of mind related to cosmetic concerns of the purchaser about wearing a hearing instrument; and

(b) The purchaser sends notice of the cancellation by certified mail, return receipt requested, to the establishment employing the licensed hearing instrument fitter/dispenser, certified audiologist, or interim permit holder at the time the hearing instrument was originally purchased, and the notice is posted not later than thirty days following the date of delivery, but the purchaser and the licensed hearing instrument fitter/dispenser, certified audiologist, or interim permit holder may extend the deadline for posting of the notice of rescission by mutual, written agreement. In the event the hearing instrument develops a problem which qualifies as a reasonable cause for rescission or which prevents the purchaser from evaluating the hearing instrument, and the purchaser notifies the establishment employing the licensed hearing instrument fitter/dispenser, certified audiologist, or interim permit holder of the problem during the thirty days following the date of delivery and documents such notification, the deadline for posting the notice of rescission shall be extended by an equal number of days as those between the date of the notification of the problem to the date of notification of availability for redeliveries. Where the hearing instrument is returned to the licensed hearing instrument fitter/dispenser, certified audiologist, or interim permit holder for any inspection for modification or repair, and the licensed hearing instrument fitter/dispenser, certified audiologist, or interim permit holder has notified the purchaser that the hearing instrument is available for redelivery, and where the purchaser has not responded by either taking possession of the hearing instrument or instructing the licensed hearing instrument fitter/dispenser, certified audiologist, or interim permit holder to forward it to the purchaser, then the deadline for giving notice of the rescission shall extend no more than seven working days after this notice of availability.

(2) If the transaction is rescinded under this section or as otherwise provided by law and the hearing instrument is returned to the licensed hearing instrument fitter/dispenser, certified audiologist, or interim permit holder, the licensed hearing instrument fitter/dispenser, certified audiologist, or interim permit holder shall refund to the purchaser any payments or deposits for that hearing instrument. However, the licensed hearing instrument fitter/dispenser, certified audiologist, or interim permit holder may retain, for each hearing instrument, fifteen percent of the total purchase price or one hundred twenty-five dollars, whichever is less. After December 31, 1996, the recision amount shall be determined by the board. The licensed hearing instrument fitter/dispenser, certified audiologist, or interim permit holder shall also return any goods traded in contemplation of the sale, less any costs incurred by the licensed hearing instrument fitter/dispenser, certified audiologist, or interim permit holder in making those goods ready for resale. The refund shall be made within ten business days after the rescission. The buyer shall incur no additional liability for such rescission.

(3) For the purposes of this section, the purchaser shall have recourse against the bond held by the establishment entering into a purchase agreement with the buyer, as provided by RCW 18.35.240.

**Sec. 14.** RCW 18.35.190 and 1996 c 200 s 26 are each amended to read as follows:

In addition to remedies otherwise provided by law, in any action brought by or on behalf of a person required to be licensed or certified or to hold ~~((a))~~ an interim permit ((hereunder)) under this chapter, or by any assignee or transferee, it shall be necessary to allege and prove that the licensee or certificate or interim permit holder at the time of the transaction held a valid license, certificate, or interim permit as required by this chapter, and that such license, certificate, or interim permit has not been suspended or revoked pursuant to RCW 18.35.110, 18.35.120, or 18.130.160.

**Sec. 15.** RCW 18.35.195 and 1996 c 200 s 27 are each amended to read as follows:

(1) This chapter shall not apply to military or federal government employees.

(2) This chapter does not prohibit or regulate:

(a) Fitting or dispensing by students enrolled in a board-approved program who are directly supervised by a licensed hearing instrument fitter/dispenser ~~((or))~~, a certified audiologist under the provisions of this chapter, or an instructor at a two-year hearing instrument fitter/dispenser degree program that is approved by the board; and

(b) Hearing instrument fitter/dispensers, speech-language pathologists, or audiologists of other states, territories, or countries, or the District of Columbia while appearing as clinicians of bona fide educational seminars sponsored by speech-language pathology, audiology, hearing instrument fitter/dispenser, medical, or other healing art professional associations so long as such activities do not go beyond the scope of practice defined by this chapter.



**Sec. 16.** RCW 18.35.205 and 1996 c 200 s 28 are each amended to read as follows:

The legislature finds that the public health, safety, and welfare would best be protected by uniform regulation of hearing instrument fitter/dispensers, speech-language pathologists, audiologists, and interim permit holders throughout the state. Therefore, the provisions of this chapter relating to the licensing or certification of hearing instrument fitter/dispensers, speech-language pathologists, and audiologists and regulation of interim permit holders and their respective establishments or facilities is exclusive. No political subdivision of the state of Washington within whose jurisdiction a hearing instrument fitter/dispenser, audiologist, or speech-language pathologist establishment or facility is located may require any registrations, bonds, licenses, certificates, or interim permits of the establishment or facility or its employees or charge any fee for the same or similar purposes: PROVIDED, HOWEVER, That nothing herein shall limit or abridge the authority of any political subdivision to levy and collect a general and nondiscriminatory license fee levied on all businesses, or to levy a tax based upon the gross business conducted by any firm within the political subdivision.

**Sec. 17.** RCW 18.35.230 and 1996 c 200 s 29 are each amended to read as follows:

(1) Each licensee or certificate or interim permit holder shall name a registered agent to accept service of process for any violation of this chapter or rule adopted under this chapter.

(2) The registered agent may be released at the expiration of one year after the license, certificate, or interim permit issued under this chapter has expired or been revoked.

(3) Failure to name a registered agent for service of process for violations of this chapter or rules adopted under this chapter may be grounds for disciplinary action.

**Sec. 18.** RCW 18.35.240 and 1996 c 200 s 30 are each amended to read as follows:

(1) Every establishment engaged in the fitting and dispensing of hearing instruments shall file with the department a surety bond in the sum of ten thousand dollars, running to the state of Washington, for the benefit of any person injured or damaged as a result of any violation by the establishment's employees or agents of any of the provisions of this chapter or rules adopted by the secretary.

(2) In lieu of the surety bond required by this section, the establishment may file with the department a cash deposit or other negotiable security acceptable to the department. All obligations and remedies relating to surety bonds shall apply to deposits and security filed in lieu of surety bonds.

(3) If a cash deposit is filed, the department shall deposit the funds. The cash or other negotiable security deposited with the department shall be returned to the depositor one year after the establishment has discontinued the fitting and dispensing of hearing instruments if no legal action has been instituted against the

establishment, its agents or employees, or the cash deposit or other security. The establishment owners shall notify the department if the establishment is sold, changes names, or has discontinued the fitting and dispensing of hearing instruments in order that the cash deposit or other security may be released at the end of one year from that date.

(4) A surety may file with the department notice of withdrawal of the bond of the establishment. Upon filing a new bond, or upon the expiration of sixty days after the filing of notice of withdrawal by the surety, the liability of the former surety for all future acts of the establishment terminates.

(5) Upon the filing with the department notice by a surety of withdrawal of the surety on the bond of an establishment or upon the cancellation by the department of the bond of a surety under this section, the department shall immediately give notice to the establishment by certified or registered mail with return receipt requested addressed to the establishment's last place of business as filed with the department.

(6) The department shall immediately cancel the bond given by a surety company upon being advised that the surety company's license to transact business in this state has been revoked.

(7) Each invoice for the purchase of a hearing instrument provided to a customer must clearly display on the first page the bond number of the establishment or the licensee or certificate or interim permit holder fitting/dispensing the hearing instrument.

**Sec. 19.** RCW 18.35.250 and 1996 c 200 s 31 are each amended to read as follows:

(1) In addition to any other legal remedies, an action may be brought in any court of competent jurisdiction upon the bond, cash deposit, or security in lieu of a surety bond required by this chapter, by any person having a claim against a licensee or certificate or interim permit holder, agent, or establishment for any violation of this chapter or any rule adopted under this chapter. The aggregate liability of the surety to all claimants shall in no event exceed the sum of the bond. Claims shall be satisfied in the order of judgment rendered.

(2) An action upon the bond shall be commenced by serving and filing the complaint within one year from the date of the cancellation of the bond. An action upon a cash deposit or other security shall be commenced by serving and filing the complaint within one year from the date of notification to the department of the change in ownership of the establishment or the discontinuation of the fitting and dispensing of hearing instruments by that establishment. Two copies of the complaint shall be served by registered or certified mail, return receipt requested, upon the department at the time the suit is started. The service constitutes service on the surety. The secretary shall transmit one copy of the complaint to the surety within five business days after the copy has been received.

(3) The secretary shall maintain a record, available for public inspection, of all suits commenced under this chapter under surety bonds, or the cash or other security deposited in lieu of the surety bond. In the event that any final judgment

impairs the liability of the surety upon a bond so furnished or the amount of the deposit so that there is not in effect a bond undertaking or deposit in the full amount prescribed in this section, the department shall suspend the license or certificate until the bond undertaking or deposit in the required amount, unimpaired by unsatisfied judgment claims, has been furnished.

(4) If a judgment is entered against the deposit or security required under this chapter, the department shall, upon receipt of a certified copy of a final judgment, pay the judgment from the amount of the deposit or security.

**Sec. 20.** RCW 18.35.260 and 1996 c 200 s 16 are each amended to read as follows:

(1) A person who is not licensed with the secretary as a hearing instrument fitter/dispenser under the requirements of this chapter may not represent himself or herself as being so licensed and may not use in connection with his or her name the words "licensed hearing instrument fitter/dispenser," "hearing instrument specialist," or "hearing aid fitter/dispenser," or a variation, synonym, word, sign, number, insignia, coinage, or whatever expresses, employs, or implies these terms, names, or functions of a licensed hearing instrument fitter/dispenser.

(2) A person who is not certified with the secretary as a speech-language pathologist under the requirements of this chapter may not represent himself or herself as being so certified and may not use in connection with his or her name the words including "certified speech-language pathologist" or a variation, synonym, word, sign, number, insignia, coinage, or whatever expresses, employs, or implies these terms, names, or functions as a certified speech-language pathologist.

(3) A person who is not certified with the secretary as an audiologist under the requirements of this chapter may not represent himself or herself as being so certified and may not use in connection with his or her name the words "certified audiologist" or a variation, synonym, letter, word, sign, number, insignia, coinage, or whatever expresses, employs, or implies these terms, names, or functions of a certified audiologist.

~~(4) ((A person who does not hold a permit issued by the secretary as a hearing instrument fitter/dispenser permittee under the requirements of this chapter may not represent himself or herself as being so permitted and may not use in connection with his or her name the words "hearing instrument fitter/dispenser permit holder" or a variation, synonym, word, sign, number, insignia, coinage, or whatever expresses, employs, or implies these terms, names, or functions of a hearing instrument fitter/dispenser permit holder.~~

—(5)) Nothing in this chapter prohibits a person credentialed in this state under another act from engaging in the practice for which he or she is credentialed.

**NEW SECTION. Sec. 21.** Sections 1 through 14 and 16 through 20 of this act take effect January 1, 2003.

Passed the House March 9, 1998.  
Passed the Senate March 3, 1998.  
Approved by the Governor March 25, 1998.  
Filed in Office of Secretary of State March 25, 1998.

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**CHAPTER 143**

[House Bill 2704]

**INACTIVE LICENSE STATUS FOR PHYSICAL THERAPISTS**

AN ACT Relating to inactive status for physical therapists; and adding a new section to chapter 18.74 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 18.74 RCW to read as follows:

Any physical therapist licensed under this chapter not practicing physical therapy or providing services may place his or her license in an inactive status. The board shall prescribe requirements for maintaining an inactive status and converting from an inactive or active status. The secretary may establish fees for alterations in license status.

Passed the House March 7, 1998.  
Passed the Senate March 3, 1998.  
Approved by the Governor March 25, 1998.  
Filed in Office of Secretary of State March 25, 1998.

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**CHAPTER 144**

[Substitute House Bill 2826]

**NONHIGHWAY VEHICLE FUNDS DISTRIBUTION TO  
NONPROFIT OFF-ROAD VEHICLE ORGANIZATIONS**

AN ACT Relating to distribution of nonhighway vehicle funds; and amending RCW 46.09.240.

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

**Sec. 1.** RCW 46.09.240 and 1991 c. 363 s 122 are each amended to read as follows:

(1) After deducting administrative expenses and the expense of any programs conducted under this chapter, the interagency committee for outdoor recreation shall, at least once each year, distribute the funds it receives under RCW 46.09.110 and 46.09.170 to state agencies, counties, municipalities, federal agencies, nonprofit ORV organizations, and Indian tribes. Funds distributed under this section to nonprofit ORV organizations may be spent only on projects or activities that benefit ORV recreation on lands once publicly owned that come into private ownership in a federally approved land exchange completed between January 1, 1998, and January 1, 2005.

The committee shall adopt rules governing applications for funds administered by the agency under this chapter and shall determine the amount of money

distributed to each applicant. Agencies receiving funds under this chapter for capital purposes shall consider the possibility of contracting with the state parks and recreation commission, the department of natural resources, or other federal, state, and local agencies to employ the youth development and conservation corps or other youth crews in completing the project.

(2) The interagency committee shall require each applicant for land acquisition or development funds under this section to conduct, before submitting the application, a public hearing in the nearest town of five hundred population or more, and publish notice of such hearing on the same day of each week for two consecutive weeks as follows:

(a) In the newspaper of general circulation published nearest the proposed project;

(b) In the newspaper having the largest circulation in the county or counties where the proposed project is located; and

(c) If the proposed project is located in a county with a population of less than forty thousand, the notice shall also be published in the newspaper having the largest circulation published in the nearest county that has a population of forty thousand or more.

(3) The notice shall state that the purpose of the hearing is to solicit comments regarding an application being prepared for submission to the interagency committee for outdoor recreation for acquisition or development funds under the off-road and nonhighway vehicle program. The applicant shall file notice of the hearing with the department of ecology at the main office in Olympia and shall comply with the State Environmental Policy Act, chapter 43.21C RCW. A written record and a magnetic tape recording of the hearing shall be included in the application.

Passed the House February 10, 1998.

Passed the Senate March 6, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

## CHAPTER 145

[Substitute House Bill 2858]

### PAYMENT OF TAXES ON RENTAL CARS—REVISIONS

AN ACT Relating to payment of taxes on rental cars; amending RCW 82.44.023; creating a new section; and declaring an emergency.

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

**Sec. 1.** RCW 82.44.023 and 1994 c 227 s 3 are each amended to read as follows:

Rental cars as defined in RCW 46.04.465 are exempt from the taxes imposed in RCW 82.44.020 (1) and (2). When a rental car ceases to be used for rental car purposes ~~((and at the time of its retail sale, the excise tax imposed in RCW 82.44.020 (1) and (2) shall be imposed in an amount equal to one-twelfth of the~~

~~annual excise tax then in effect, for each full month remaining in the vehicle's registration year))~~ the year and month tabs on the license plates shall be altered by the rental car company in such a manner as to render the plate void of any designation of month and year. The department of licensing shall, by rule, set forth the process of alteration and shall provide at no cost to the rental car company, any materials necessary to render the plate void of any designation of the month and year tabs. At the time of retail sale, motor vehicle excise tax and applicable licensing fees will be collected for a full twelve months.

NEW SECTION. Sec. 2. The vehicle services division of the department of licensing shall convene a study group to include representatives from the department of licensing, the department of revenue, the rental car industry, and the franchised vehicle dealers industry. The study group shall conduct an assessment of the registration year impact during the period of January 1, 1997, through July 1, 1999, upon the requirements of RCW 46.16.006, 82.08.020, and chapter 82.44 RCW and whether the tax rate currently set on car rental transactions provides revenue neutrality. The study group shall report its findings and recommendations, if any, to the transportation committees of the house of representatives and senate by December 31, 1998.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the House March 7, 1998.

Passed the Senate March 5, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

## CHAPTER 146

[House Bill 2905]

### PROHIBITION OF PLACEMENT OF SEXUALLY VIOLENT PREDATORS IN STATE MENTAL FACILITIES

AN ACT Relating to placement of sexually violent predators by the department of social and health services at state mental facilities; amending RCW 71.09.060; and declaring an emergency.

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

**Sec. 1.** RCW 71.09.060 and 1995 c 216 s 6 are each amended to read as follows:

(1) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. When the determination is made by a jury, the verdict must be unanimous.

If, on the date that the petition is filed, the person was living in the community after release from custody, the state must also prove beyond a reasonable doubt that the person had committed a recent overt act. If the state alleges that the prior sexually violent offense that forms the basis for the petition

for commitment was an act that was sexually motivated as provided in RCW 71.09.020(6)(c), the state must prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated as defined in RCW 9.94A.030. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the department of social and health services for placement in a secure facility operated by the department of social and health services for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe either (a) to be at large, or (b) to be released to a less restrictive alternative as set forth in RCW 71.09.092. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the person's release.

(2) If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to or has been released pursuant to RCW 10.77.090(3), and his or her commitment is sought pursuant to subsection (1) of this section, the court shall first hear evidence and determine whether the person did commit the act or acts charged if the court did not enter a finding prior to dismissal under RCW 10.77.090(3) that the person committed the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on his or her own behalf, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, it shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this section.

(3) The state shall comply with RCW 10.77.220 while confining the person pursuant to this chapter, except that during all court proceedings the person shall be detained in a secure facility. ~~The ((facility)) department shall not ((be located))~~ place the person, even temporarily, in a facility on the grounds of any state mental facility or regional habilitation center because these institutions are insufficiently secure for this population.

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

Passed the House February 13, 1998.  
Passed the Senate March 6, 1998.  
Approved by the Governor March 25, 1998.  
Filed in Office of Secretary of State March 25, 1998.

**CHAPTER 147**

[Substitute House Bill 2936]

**PROFESSIONAL NEGLIGENCE AGAINST HEALTH CARE PROVIDERS—  
CLARIFYING STATUTE OF LIMITATIONS**

AN ACT Relating to actions for injuries resulting from health care; amending RCW 4.16.350; and creating a new section.

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

**Sec. 1.** RCW 4.16.350 and 1988 c 144 s 2 are each amended to read as follows:

Any civil action for damages for injury occurring as a result of health care which is provided after June 25, 1976 against:

(1) A person licensed by this state to provide health care or related services, including, but not limited to, a physician, osteopathic physician, dentist, nurse, optometrist, ~~((pediatricist))~~ podiatric physician and surgeon, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his estate or personal representative;

(2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his estate or personal representative; or

(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his employment, including, in the event such officer, director, employee, or agent is deceased, his estate or personal representative;

based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury or condition, or one year of the time the patient or his representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, whichever period expires later, except that in no event shall an action be commenced more than eight years after said act or omission: **PROVIDED**, That the time for commencement of an action is tolled upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect, until the date the patient or the patient's representative has actual knowledge of the act of fraud or concealment, or of the presence of the foreign body; the patient or the patient's representative has one



year from the date of the actual knowledge in which to commence a civil action for damages.

For purposes of this section, notwithstanding RCW 4.16.190, the knowledge of a custodial parent or guardian shall be imputed to a person under the age of eighteen years, and such imputed knowledge shall operate to bar the claim of such minor to the same extent that the claim of an adult would be barred under this section. Any action not commenced in accordance with this section shall be barred.

For purposes of this section, with respect to care provided after June 25, 1976, and before August 1, 1986, the knowledge of a custodial parent or guardian shall be imputed as of April 29, 1987, to persons under the age of eighteen years.

This section does not apply to a civil action based on intentional conduct brought against those individuals or entities specified in this section by a person for recovery of damages for injury occurring as a result of childhood sexual abuse as defined in RCW 4.16.340(5).

**NEW SECTION. Sec. 2.** This act applies to any cause of action filed on or after the effective date of this act.

Passed the House February 13, 1998.

Passed the Senate March 6, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

## CHAPTER 148

[Substitute House Bill 3109]

### VERIFICATION OF INCOME ELIGIBILITY FOR THE BASIC HEALTH PLAN—PENALTIES

AN ACT Relating to verification of income eligibility for the basic health plan; reenacting and amending RCW 70.47.060; and prescribing penalties.

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

**Sec. 1.** RCW 70.47.060 and 1997 c 337 s 2, 1997 c 335 s 2, 1997 c 245 s 6, and 1997 c 231 s 206 are each reenacted and amended to read as follows:

The administrator has the following powers and duties:

(1) To design and from time to time revise a schedule of covered basic health care services, including physician services, inpatient and outpatient hospital services, prescription drugs and medications, and other services that may be necessary for basic health care. In addition, the administrator may, to the extent that funds are available, offer as basic health plan services chemical dependency services, mental health services and organ transplant services; however, no one service or any combination of these three services shall increase the actuarial value of the basic health plan benefits by more than five percent excluding inflation, as determined by the office of financial management. All subsidized and nonsubsidized enrollees in any participating managed health care system under the Washington basic health plan shall be entitled to receive covered basic

health care services in return for premium payments to the plan. The schedule of services shall emphasize proven preventive and primary health care and shall include all services necessary for prenatal, postnatal, and well-child care. However, with respect to coverage for groups of subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that such services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider. The schedule of services shall also include a separate schedule of basic health care services for children, eighteen years of age and younger, for those subsidized or nonsubsidized enrollees who choose to secure basic coverage through the plan only for their dependent children. In designing and revising the schedule of services, the administrator shall consider the guidelines for assessing health services under the mandated benefits act of 1984, RCW ((48.42.080)) 48.47.030, and such other factors as the administrator deems appropriate.

However, with respect to coverage for subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that the services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider.

(2)(a) To design and implement a structure of periodic premiums due the administrator from subsidized enrollees that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members. The enrollment of children shall not require the enrollment of their parent or parents who are eligible for the plan. The structure of periodic premiums shall be applied to subsidized enrollees entering the plan as individuals pursuant to subsection (9) of this section and to the share of the cost of the plan due from subsidized enrollees entering the plan as employees pursuant to subsection (10) of this section.

(b) To determine the periodic premiums due the administrator from nonsubsidized enrollees. Premiums due from nonsubsidized enrollees shall be in an amount equal to the cost charged by the managed health care system provider to the state for the plan plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201.

(c) An employer or other financial sponsor may, with the prior approval of the administrator, pay the premium, rate, or any other amount on behalf of a subsidized or nonsubsidized enrollee, by arrangement with the enrollee and through a mechanism acceptable to the administrator.

(d) To develop, as an offering by every health carrier providing coverage identical to the basic health plan, as configured on January 1, 1996, a basic health plan model plan with uniformity in enrollee cost-sharing requirements.

(3) To design and implement a structure of enrollee cost sharing due a managed health care system from subsidized and nonsubsidized enrollees. The structure shall discourage inappropriate enrollee utilization of health care services, and may utilize copayments, deductibles, and other cost-sharing mechanisms, but shall not be so costly to enrollees as to constitute a barrier to appropriate utilization of necessary health care services.

(4) To limit enrollment of persons who qualify for subsidies so as to prevent an overexpenditure of appropriations for such purposes. Whenever the administrator finds that there is danger of such an overexpenditure, the administrator shall close enrollment until the administrator finds the danger no longer exists.

(5) To limit the payment of subsidies to subsidized enrollees, as defined in RCW 70.47.020. The level of subsidy provided to persons who qualify may be based on the lowest cost plans, as defined by the administrator.

(6) To adopt a schedule for the orderly development of the delivery of services and availability of the plan to residents of the state, subject to the limitations contained in RCW 70.47.080 or any act appropriating funds for the plan.

(7) To solicit and accept applications from managed health care systems, as defined in this chapter, for inclusion as eligible basic health care providers under the plan. The administrator shall endeavor to assure that covered basic health care services are available to any enrollee of the plan from among a selection of two or more participating managed health care systems. In adopting any rules or procedures applicable to managed health care systems and in its dealings with such systems, the administrator shall consider and make suitable allowance for the need for health care services and the differences in local availability of health care resources, along with other resources, within and among the several areas of the state. Contracts with participating managed health care systems shall ensure that basic health plan enrollees who become eligible for medical assistance may, at their option, continue to receive services from their existing providers within the managed health care system if such providers have entered into provider agreements with the department of social and health services.

(8) To receive periodic premiums from or on behalf of subsidized and nonsubsidized enrollees, deposit them in the basic health plan operating account, keep records of enrollee status, and authorize periodic payments to managed health care systems on the basis of the number of enrollees participating in the respective managed health care systems.

(9) To accept applications from individuals residing in areas served by the plan, on behalf of themselves and their spouses and dependent children, for enrollment in the Washington basic health plan as subsidized or nonsubsidized enrollees, to establish appropriate minimum-enrollment periods for enrollees as may be necessary, and to determine, upon application and on a reasonable schedule defined by the authority, or at the request of any enrollee, eligibility due to current gross family income for sliding scale premiums. When an enrollee fails

to report income or income changes accurately, the administrator shall have the authority either to bill the enrollee for the amounts overpaid by the state or to impose civil penalties of up to two hundred percent of the amount of subsidy overpaid due to the enrollee incorrectly reporting income. The administrator shall adopt rules to define the appropriate application of these sanctions and the processes to implement the sanctions provided in this subsection, within available resources. No subsidy may be paid with respect to any enrollee whose current gross family income exceeds twice the federal poverty level or, subject to RCW 70.47.110, who is a recipient of medical assistance or medical care services under chapter 74.09 RCW. ~~((If, as a result of an eligibility review, the administrator determines that a subsidized enrollee's income exceeds twice the federal poverty level and that the enrollee knowingly failed to inform the plan of such increase in income, the administrator may bill the enrollee for the subsidy paid on the enrollee's behalf during the period of time that the enrollee's income exceeded twice the federal poverty level.))~~ If a number of enrollees drop their enrollment for no apparent good cause, the administrator may establish appropriate rules or requirements that are applicable to such individuals before they will be allowed to reenroll in the plan.

(10) To accept applications from business owners on behalf of themselves and their employees, spouses, and dependent children, as subsidized or nonsubsidized enrollees, who reside in an area served by the plan. The administrator may require all or the substantial majority of the eligible employees of such businesses to enroll in the plan and establish those procedures necessary to facilitate the orderly enrollment of groups in the plan and into a managed health care system. The administrator may require that a business owner pay at least an amount equal to what the employee pays after the state pays its portion of the subsidized premium cost of the plan on behalf of each employee enrolled in the plan. Enrollment is limited to those not eligible for medicare who wish to enroll in the plan and choose to obtain the basic health care coverage and services from a managed care system participating in the plan. The administrator shall adjust the amount determined to be due on behalf of or from all such enrollees whenever the amount negotiated by the administrator with the participating managed health care system or systems is modified or the administrative cost of providing the plan to such enrollees changes.

(11) To determine the rate to be paid to each participating managed health care system in return for the provision of covered basic health care services to enrollees in the system. Although the schedule of covered basic health care services will be the same for similar enrollees, the rates negotiated with participating managed health care systems may vary among the systems. In negotiating rates with participating systems, the administrator shall consider the characteristics of the populations served by the respective systems, economic circumstances of the local area, the need to conserve the resources of the basic health plan trust account, and other factors the administrator finds relevant.

(12) To monitor the provision of covered services to enrollees by participating managed health care systems in order to assure enrollee access to good quality basic health care, to require periodic data reports concerning the utilization of health care services rendered to enrollees in order to provide adequate information for evaluation, and to inspect the books and records of participating managed health care systems to assure compliance with the purposes of this chapter. In requiring reports from participating managed health care systems, including data on services rendered enrollees, the administrator shall endeavor to minimize costs, both to the managed health care systems and to the plan. The administrator shall coordinate any such reporting requirements with other state agencies, such as the insurance commissioner and the department of health, to minimize duplication of effort.

(13) To evaluate the effects this chapter has on private employer-based health care coverage and to take appropriate measures consistent with state and federal statutes that will discourage the reduction of such coverage in the state.

(14) To develop a program of proven preventive health measures and to integrate it into the plan wherever possible and consistent with this chapter.

(15) To provide, consistent with available funding, assistance for rural residents, underserved populations, and persons of color.

(16) In consultation with appropriate state and local government agencies, to establish criteria defining eligibility for persons confined or residing in government-operated institutions.

Passed the House February 13, 1998.

Passed the Senate March 11, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

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## CHAPTER 149

[Engrossed Substitute House Bill 2752]

### PROHIBITING UNSOLICITED ELECTRONIC MAIL

AN ACT Relating to electronic mail; adding a new chapter to Title 19 RCW; creating a new section; prescribing penalties; and providing an expiration date.

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

**NEW SECTION.** **Sec. 1.** The legislature finds that the volume of commercial electronic mail is growing, and the consumer protection division of the attorney general's office reports an increasing number of consumer complaints about commercial electronic mail. Interactive computer service providers indicate that their systems sometimes cannot handle the volume of commercial electronic mail being sent and that filtering systems fail to screen out unsolicited commercial electronic mail messages when senders use a third party's internet domain name without the third party's permission, or otherwise misrepresent the message's point of origin. The legislature seeks to provide some immediate relief to interactive computer service providers by prohibiting the sending of

commercial electronic mail messages that use a third party's internet domain name without the third party's permission, misrepresent the message's point of origin, or contain untrue or misleading information in the subject line.

The legislature also finds that the utilization of electronic mail messages for commercial purposes merits further study. A select task force should be created to explore technical, legal, and cost issues surrounding the usage of electronic mail messages for commercial purposes and to recommend to the legislature any potential legislation needed for regulating commercial electronic mail messages.

**NEW SECTION. Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commercial electronic mail message" means an electronic mail message sent for the purpose of promoting real property, goods, or services for sale or lease.

(2) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

(3) "Initiate the transmission" refers to the action by the original sender of an electronic mail message, not to the action by any intervening interactive computer service that may handle or retransmit the message.

(4) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and such systems operated or services offered by libraries or educational institutions.

(5) "Internet domain name" refers to a globally unique, hierarchical reference to an internet host or service, assigned through centralized internet naming authorities, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

**NEW SECTION. Sec. 3.** (1) No person, corporation, partnership, or association may initiate the transmission of a commercial electronic mail message from a computer located in Washington or to an electronic mail address that the sender knows, or has reason to know, is held by a Washington resident that:

(a) Uses a third party's internet domain name without permission of the third party, or otherwise misrepresents any information in identifying the point of origin or the transmission path of a commercial electronic mail message; or

(b) Contains false or misleading information in the subject line.

(2) For purposes of this section, a person, corporation, partnership, or association knows that the intended recipient of a commercial electronic mail message is a Washington resident if that information is available, upon request, from the registrant of the internet domain name contained in the recipient's electronic mail address.

**NEW SECTION. Sec. 4.** (1) It is a violation of the consumer protection act, chapter 19.86 RCW, to initiate the transmission of a commercial electronic mail message that:

(a) Uses a third party's internet domain name without permission of the third party, or otherwise misrepresents any information in identifying the point of origin or the transmission path of a commercial electronic mail message; or

(b) Contains false or misleading information in the subject line.

(2) The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

**NEW SECTION. Sec. 5.** (1) Damages to the recipient of a commercial electronic mail message sent in violation of this chapter are five hundred dollars, or actual damages, whichever is greater.

(2) Damages to an interactive computer service resulting from a violation of this chapter are one thousand dollars, or actual damages, whichever is greater.

**NEW SECTION. Sec. 6.** (1) An interactive computer service may, upon its own initiative, block the receipt or transmission through its service of any commercial electronic mail that it reasonably believes is, or will be, sent in violation of this chapter.

(2) No interactive computer service may be held liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any commercial electronic mail which it reasonably believes is, or will be, sent in violation of this chapter.

**NEW SECTION. Sec. 7.** Sections 1 through 6 of this act constitute a new chapter in Title 19 RCW.

**NEW SECTION. Sec. 8.** (1) The select task force on commercial electronic mail messages is hereby created. The select task force shall:

(a) Identify technical, legal, and cost issues in relation to the transmission and receipt of commercial electronic mail messages over the internet;

(b) Evaluate whether existing laws are sufficient to resolve any technical, legal, or financial problems created by the increasing volume of commercial electronic mail messages;

(c) Review efforts being made by the federal government and other states to regulate the transmission of commercial electronic mail messages; and

(d) Prepare a report identifying policy options and recommendations for any potential legislation needed to regulate commercial electronic mail messages. The report shall be delivered to the house of representatives energy and utilities committee by November 15, 1998.

(2) The select task force shall be composed of five members, consisting of:

(a) Two members of the house of representatives, one from each of the two largest caucuses, each member being a member of the house of representatives energy and utilities committee, appointed by the speaker of the house of representatives;

(b) Two members of the senate, one from each of the two largest caucuses, each member being a member of the senate energy and utilities committee, appointed by the president; and

(c) One person appointed by the governor.

(3) The select task force shall solicit input from interested parties, including but not limited to, persons representing:

(a) Attorney general's consumer protection division;

(b) Internet service providers;

(c) Direct marketers;

(d) Manufacturers of electronic mail messaging software;

(e) Nonprofit organizations interested in free speech and other civil liberty matters; and

(f) Internet users.

(4) Staff support for the select task force shall be provided by the house of representatives office of program research and senate committee services.

(5) This section expires December 31, 1998.

Passed the House March 7, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

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## CHAPTER 150

[Substitute House Bill 2998]

### LIMITED IMMUNITY FOR USE OF SEMIAUTOMATIC EXTERNAL DEFIBRILLATORS

AN ACT Relating to limited immunity for use of semiautomatic external defibrillators; and adding a new section to chapter 70.54 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 70.54 RCW to read as follows:

(1) As used in this section, "defibrillator" means a semiautomatic external defibrillator as prescribed by a physician licensed under chapter 18.71 RCW or an osteopath licensed under chapter 18.57 RCW.

(2) A person or entity who acquires a defibrillator shall ensure that:

(a) Expected defibrillator users receive reasonable instruction in defibrillator use and cardiopulmonary resuscitation by a course approved by the department of health;

(b) The defibrillator is maintained and tested by the acquirer according to the manufacturer's operational guidelines;

(c) Upon acquiring a defibrillator, medical direction is enlisted by the acquirer from a licensed physician in the use of the defibrillator and cardiopulmonary resuscitation;



(d) The person or entity who acquires a defibrillator shall notify the local emergency medical services organization about the existence and the location of the defibrillator; and

(e) The defibrillator user shall call 911 or its local equivalent as soon as possible after the emergency use of the defibrillator and shall assure that appropriate follow-up data is made available as requested by emergency medical service or other health care providers.

(3) A person who uses a defibrillator at the scene of an emergency and all other persons and entities providing services under this section are immune from civil liability for any personal injury that results from any act or omission in the use of the defibrillator in an emergency setting.

(4) The immunity from civil liability does not apply if the acts or omissions amount to gross negligence or willful or wanton misconduct.

(5) The requirements of subsection (2) of this section shall not apply to any individual using a defibrillator in an emergency setting if that individual is acting as a good samaritan under RCW 4.24.300.

Passed the House February 10, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

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## CHAPTER 151

[Senate Bill 5217]

### DEATH BENEFITS IN VOLUNTEER FIRE FIGHTERS' RELIEF AND PENSION SYSTEM— REVISIONS

AN ACT Relating to death benefits in the volunteer fire fighters' relief and pension system; amending RCW 41.24.160; and declaring an emergency.

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

**Sec. 1.** RCW 41.24.160 and 1996 c 57 s 2 are each amended to read as follows:

(1) Whenever a fire fighter, or a reserve officer provided a benefit under this section, dies as the result of injuries received, or sickness contracted in consequence or as the result of the performance of his or her duties, the board of trustees shall order and direct the payment of the sum of ~~((two))~~ one hundred fifty-two thousand dollars to his widow or her widower, or if there is no widow or widower, then to his or her dependent child or children, or if there is no dependent child or children, then to his or her parents or either of them, and the sum of one thousand two hundred seventy-five dollars per month to his widow or her widower during his or her life together with the additional monthly sum of one hundred ten dollars for each child of the member, unemancipated or under eighteen years of age, dependent upon the member for support at the time of his or her death, to a maximum total of two thousand five hundred fifty dollars per month.

(2) If the widow or widower does not have legal custody of one or more dependent children of the deceased fire fighter or if, after the death of the fire fighter, legal custody of such child or children passes from the widow or widower to another person, any payment on account of such child or children not in the legal custody of the widow or widower shall be made to the person or persons having legal custody of such child or children. Such payments on account of such child or children shall be subtracted from the amount to which such widow or widower would have been entitled had such widow or widower had legal custody of all the children and the widow or widower shall receive the remainder after such payments on account of such child or children have been subtracted. If there is no widow or widower, or the widow or widower dies while there are children, unemancipated or under eighteen years of age, then the amount of eight hundred twenty-five dollars per month shall be paid for the youngest or only child together with an additional seventy dollars per month for each additional of such children to a maximum of one thousand six hundred fifty dollars per month until they become emancipated or reach the age of eighteen years; and if there are no widow or widower, child, or children entitled thereto, then to his or her parents or either of them the sum of eight hundred twenty-five dollars per month for life, if it is proved to the satisfaction of the board that the parents, or either of them, were dependent on the deceased for their support at the time of his or her death. In any instance in subsections (1) and (2) of this section, if the widow or widower, child or children, or the parents, or either of them, marries while receiving such pension the person so marrying shall thereafter receive no further pension from the fund.

(3) In the case provided for in this section, the monthly payment provided may be converted in whole or in part into a lump sum payment, not in any case to exceed twelve thousand dollars, equal or proportionate, as the case may be, to the actuarial equivalent of the monthly payment in which event the monthly payments shall cease in whole or in part accordingly or proportionately. Such conversion may be made either upon written application to the state board and shall rest in the discretion of the state board; or the state board is authorized to make, and authority is hereby given it to make, on its own motion, lump sum payments, equal or proportionate, as the case may be, to the value of the annuity then remaining in full satisfaction of claims due to dependents. Within the rule aforesaid the amount and value of the lump sum payment may be agreed upon between the applicant and the state board. Any person receiving a monthly payment under this section on June 29, 1961, may elect, within two years, to convert such payments into a lump sum payment as provided in this section.

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

Passed the Senate March 7, 1998.  
Passed the House February 27, 1998.  
Approved by the Governor March 25, 1998.  
Filed in Office of Secretary of State March 25, 1998.

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**CHAPTER 152**

[Substitute Senate Bill 5636]

**HEALTH INSPECTION WARRANTS IN RESPONSE TO POLLUTION IN  
SHELLFISH HARVESTING AREAS—REVISIONS**

AN ACT Relating to health inspection warrants; and amending RCW 70.118.030.

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

**Sec. 1.** RCW 70.118.030 and 1977 ex.s. c 133 s 3 are each amended to read as follows:

(1) Local boards of health shall identify failing septic tank drainfield systems in the normal manner and will use reasonable effort to determine new failures. The local health officer, environmental health director, or equivalent officer may apply for an administrative search warrant to a court official authorized to issue a criminal search warrant. The warrant may only be applied for after the local health officer or the health officer's designee has requested inspection of the person's property under the specific administrative plan required in this section, and the person has refused the health officer or the health officer's designee access to the person's property. Timely notice must be given to any affected person that a warrant is being requested and that the person may be present at any court proceeding to consider the requested search warrant. The court official may issue the warrant upon probable cause. A request for a search warrant must show the inspection, examination, test, or sampling is in response to pollution in commercial or recreational shellfish harvesting areas or pollution in fresh water. A specific administrative plan must be developed expressly in response to the pollution. The local health officer, environmental health director, or equivalent officer shall submit the plan to the court as part of the justification for the warrant, along with specific evidence showing that it is reasonable to believe pollution is coming from the septic system on the property to be accessed for inspection. The plan must include each of the following elements:

(a) The overall goal of the inspection;

(b) The location and identification by address of the properties being authorized for inspection;

(c) Requirements for giving the person owning the property and the person occupying the property if it is someone other than the owner, notice of the plan, its provisions, and times of any inspections;

(d) The survey procedures to be used in the inspection;

(e) The criteria that would be used to define an on-site sewage system failure;

and

(f) The follow-up actions that would be pursued once an on-site sewage system failure has been identified and confirmed.

(2) Discretionary judgment will be made in implementing corrections by specifying nonwater-carried sewage disposal devices or other alternative methods of treatment and effluent disposal as a measure of ameliorating existing substandard conditions. Local regulations shall be consistent with the intent and purposes stated ((herein)) in this section.

Passed the Senate March 9, 1998.

Passed the House March 5, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

## CHAPTER 153

[Substitute Senate Bill 6114]

### PREVENTION AND CONTROL OF SPREAD OF ZEBRA MUSSELS AND EUROPEAN GREEN CRABS

AN ACT Relating to prevention and control of nonindigenous aquatic species; adding new sections to chapter 75.24 RCW; creating new sections; providing an expiration date; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** The unauthorized introduction of the zebra mussel and the European green crab into Washington state waters would pose a serious economic and environmental threat. The zebra mussel and European green crab have adverse impacts on fisheries, waterways, public and private facilities, and the functioning of natural ecosystems. The threat of zebra mussels and European green crabs requires a coordinated response. It is the intent of the legislature to prevent adverse economic and environmental impacts caused by zebra mussels and European green crabs in cooperation and coordination with local governments, the public, other states, and federal agencies.

**NEW SECTION. Sec. 2.** A new section is added to chapter 75.24 RCW to read as follows:

To complement programs authorized by the federal aquatic nuisance species task force, the department of fish and wildlife is directed to develop draft rules for legislative consideration to prevent the introduction and dispersal of zebra mussels and European green crabs and to allow eradication of infestations that may occur. The department is authorized to display and distribute material and literature informing boaters and owners of airplanes that land on water of the problem and to publicize and maintain a telephone number available to the public to express concerns and report infestations.

**NEW SECTION. Sec. 3.** A new section is added to chapter 75.24 RCW to read as follows:

The department of fish and wildlife shall prepare, maintain, and publish a list of all lakes, ponds, or other waters of the state and other states infested with zebra

mussels or European green crabs. The department may participate in regional or national groups addressing these species.

**NEW SECTION. Sec. 4.** The state shall develop a plan for controlling the introduction of zebra mussels and European green crabs. A zebra mussel and European green crab task force is created. The task force is chaired by the department of fish and wildlife.

The task force shall:

(1) Develop recommendations for legislative consideration including: (a) Control methods; (b) inspection procedures; (c) penalties; (d) notification procedures; and (e) eradication and control techniques.

(2) For each threat, identify the primary pathways of introduction, options for regulating each pathway, and if possible a recommended method of pathway control. These methods of control shall include details on what entity would be responsible for its implementation.

(3) For each recommended mechanism of pathway control, identify the estimated costs of implementing a state program, including ideas of funding sources.

(4) Provide recommendations for how to structure and fund a state program that monitors the detection and spread of these species.

When making recommendations, the task force shall emphasize working in a coordinated fashion with existing state, federal, and international programs.

The task force shall invite participation from all groups affected by the proposed pathway control measures, including representatives of aquaculture, recreational boating, seaplane operators, maritime cargo vessels, retail and wholesale aquariums, shellfish growers, marinas, and small boat harbors.

The department of fish and wildlife shall also seek the participation of the University of Washington, the department of ecology, the department of agriculture, the department of transportation, the department of natural resources, and the Washington state patrol. Appropriate federal interests shall also be invited to participate, including the United States coast guard, the United States department of agriculture and the United States fish and wildlife service.

The task force's final recommendations shall be provided to the legislature by December 1, 1998.

**NEW SECTION. Sec. 5.** Section 4 of this act expires January 1, 1999.

**NEW SECTION. Sec. 6.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**NEW SECTION. Sec. 7.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.

Passed the Senate March 7, 1998.

Passed the House March 4, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

## CHAPTER 154

[Senate Bill 6122]

### HORTICULTURAL PRODUCTS INSPECTIONS

AN ACT Relating to the inspection and certification of horticultural products; amending RCW 15.17.010, 15.17.020, 15.17.030, 15.17.050, 15.17.060, 15.17.080, 15.17.090, 15.17.130, 15.17.140, 15.17.150, 15.17.170, 15.17.190, 15.17.200, 15.17.210, 15.17.230, 15.17.240, 15.17.260, 15.17.290, 15.04.100, and 42.17.31909; adding new sections to chapter 15.17 RCW; adding a new chapter to Title 15 RCW; creating a new section; recodifying RCW 15.04.100 and 15.17.130; repealing RCW 15.17.040, 15.17.070, 15.17.100, 15.17.110, 15.17.115, 15.17.120, 15.17.160, 15.17.180, 15.17.220, 15.17.250, 15.17.280, 15.17.910, 15.17.920, 15.17.930, 15.17.950, 15.04.020, 15.04.030, 15.04.040, 15.04.060, 15.04.070, and 15.04.080; decodifying RCW 15.17.950; and prescribing penalties.

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

**Sec. 1.** RCW 15.17.010 and 1963 c 122 s 1 are each amended to read as follows:

The purpose of this chapter is to provide for the fair and orderly marketing of fruits and vegetables in the state of Washington by establishing uniform grades and standards (~~((for horticultural plants and products)) and ((to provide)) by providing~~ for the inspection of (~~(such horticultural plants or)~~) these products (~~((in the state of Washington))~~). This chapter is (~~((important and))~~) vital to (~~((the maintenance of a high level of public health and welfare of the citizens of this state by))~~) protecting the national and international reputation of (~~(horticultural plants and))~~ fruit and vegetable products grown and shipped from this state and protecting (~~((the citizens of this state))~~) consumers from the (~~((importation and))~~) sale of (~~((ungraded, immature, and))~~) inferior (~~((horticultural plants and products so as to prevent a condition conducive to substitution, confusion, deception, and fraud; a condition which if permitted to exist would tend to interfere with the orderly and fair marketing of horticultural plants and products essential to the well-being of the citizens of this state. It is hereby declared that))~~) and misrepresented fruits and vegetables. This chapter is enacted in the exercise of the police power of this state for the purpose of protecting the immediate and future health, safety, and general welfare of the citizens of this state.

**Sec. 2.** RCW 15.17.020 and 1996 c 188 s 1 are each amended to read as follows:

For the purpose of this chapter:

(1) (~~("Department" means the department of agriculture of the state of Washington:~~

~~—(2) "Director" means the director of the department or his duly authorized representative.~~

~~—(3) "Person" means a natural person, individual, or firm, partnership, corporation, company, society, and association, and every officer, agent, or~~

employee thereof. This term shall import either the singular or plural, as the case may be.

— (4) "Horticultural plant or product" includes, but is not limited to, any horticultural, floricultural, viticultural, and olivicultural plant, growing or otherwise, and their products whether grown above or below the ground's surface.

— (5) "Horticultural facilities" means, but is not limited to, the premises where horticultural plants and products are grown, stored, handled, or delivered for sale or transportation, records required by rule under this chapter, and all vehicles and equipment, whether aerial or surface, used to transport such horticultural plants or products:

— (6) "Deceptive pack" means the pack of any container which has in the outer layer or any exposed surface, horticultural plants or products which are in quality, size, condition, or any other respect so superior to those in the interior of the container in the unexposed portion as to materially misrepresent the contents. Such pack is deceptive when the outer or exposed surface is composed of horticultural plants or products whose size is not an accurate representation of the variation of the size of such horticultural plants or products in the entire container, even though such horticultural plants or products in the container are virtually uniform in size or comply with the specific horticultural plant or product for which the director in prescribing standards for grading and classifying has prescribed size variations or if such size variations are prescribed by law:

— (7) "Deceptive arrangement or display" of any horticultural plants or products, means any bulk lot or load, arrangement or display of such horticultural plants or products which has in the exposed surface, horticultural plants or products which are so superior in quality, size, condition, or any other respect to those which are concealed, or the unexposed portion, as to materially misrepresent any part of such bulk lot or load, arrangement, or display:

— (8) "Mislabel" means the placing or presence of any false or misleading statement, design, or device upon any container, or upon the label or lining of any such container, or upon the wrapper of any horticultural plants or products, or upon any such horticultural plants or products, or any placard used in connection therewith and having reference to such horticultural plants or products. A statement, design, or device is false or misleading when the horticultural plant or product or container to which it refers does not conform to such statement:

— (9) "Container" means any container, subcontainer used within a container, or any type of a container used to prepackage any horticultural plants or products: PROVIDED, That this does not include containers used by a retailer to package such horticultural plants or products sold from a bulk display to a consumer:

— (10) "Agent" means broker, commission merchant, auctioneer, solicitor, seller, or consignor, and any other person acting upon the actual or implied authority of another:

— (11) "Inspection and certification" means, but is not limited to, the inspection of any horticultural plant or product at any time prior to, during, or subsequent to harvest, by the director, and the issuance by him of a written permit to move or

~~sell or a written certificate stating the grade, classification, and if such horticultural plants or products are free of plant pests and/or other defects.~~

~~—(12) "Plant pests" means, but is not limited to, any living stage of any insects; mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria; fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage in any plant or parts thereof, or any processed, manufactured, or other products of plants.))~~ "Agent" means broker, commission merchant, solicitor, seller, or consignor, and any other person acting upon the actual or implied authority of another.

(2) "Certification" means, but is not limited to, the issuance by the director of an inspection certificate or other official document stating the grade, classification, and/or condition of any fruits or vegetables, and/or if the fruits or vegetables are free of plant pests and/or other defects.

(3) "Combination grade" means two or more grades packed together as one, except cull grades, with a minimum percent of the product of the higher grade, as established by rule.

(4) "Compliance agreement" means an agreement entered into between the department and a shipper or packer, that authorizes the shipper or packer to issue certificates of compliance for fruits and vegetables.

(5) "Container" means any container or subcontainer used to prepackage any fruits or vegetables. This does not include a container used by a retailer to package fruits or vegetables sold from a bulk display to a consumer.

(6) "Deceptive arrangement or display" means any bulk lot or load, arrangement, or display of fruits or vegetables which has in the exposed surface, fruits or vegetables which are so superior in quality, size, condition, or any other respect to those which are concealed, or the unexposed portion, as to materially misrepresent any part of the bulk lot or load, arrangement, or display.

(7) "Deceptive pack" means the pack of any container which has in the outer layer or any exposed surface fruits or vegetables which are in quality, size, condition, or any other respect so superior to those in the interior of the container in the unexposed portion as to materially misrepresent the contents. Such pack is deceptive when the outer or exposed surface is composed of fruits or vegetables whose size is not an accurate representation of the variation of the size of the fruits or vegetables in the entire container, even though the fruits or vegetables in the container are virtually uniform in size or comply with the specific standards adopted under this chapter.

(8) "Department" means the department of agriculture of the state of Washington.

(9) "Director" means the director of the department or his or her duly authorized representative.



(10) "District manager" means a person representing the director in charge of overall operation of a fruit and vegetable inspection district established under RCW 15.17.230.

(11) "Facility" means, but is not limited to, the premises where fruits and vegetables are grown, stored, handled, or delivered for sale or transportation, and all vehicles and equipment, whether aerial or surface, used to transport fruits and vegetables.

(12) "Fruits and vegetables" means any unprocessed fruits or vegetables.

(13) "Handler" means any person engaged in the business of handling, selling, processing, storing, shipping, or distributing fruits or vegetables that he or she has purchased or acquired from a producer.

(14) "Inspection" means, but is not limited to, the inspection by the director of any fruits or vegetables at any time prior to, during, or subsequent to harvest.

(15) "Mislabel" means the placing or presence of any false or misleading statement, design, or device upon any wrapper, container, container label or lining, or any placard used in connection with and having reference to fruits or vegetables.

(16) "Person" means any individual, firm, partnership, corporation, company, society, or association, and every officer, agent, or employee thereof.

(17) "Plant pests" means, but is not limited to, any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage in any plant or parts thereof, or any processed, manufactured, or other products of plants.

(18) "Sell" means to sell, offer for sale, hold for sale, or ship or transport in bulk or in containers.

(19) "Standards" means grades, classifications, and other inspection criteria for fruits and vegetables.

**Sec. 3.** RCW 15.17.030 and 1963 c 122 s 3 are each amended to read as follows:

(1) The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose. ~~((The adoption of rules shall be subject to the provisions of chapter 34.05 RCW, concerning the adoption of rules, as enacted or hereafter amended.))~~

(2) The director shall, whenever he or she considers the adoption of rules or amendments to existing rules, consult with growers, associations of growers or other industry associations, or other persons affected by such rules or amendments.

~~((3) The director may, on his own motion or shall, on the written application of twenty-five or more interested persons, call a hearing for the purpose of considering changes to any rules prescribed under the provisions of this chapter.))~~

Sec. 4. RCW 15.17.050 and 1963 c 122 s 5 are each amended to read as follows:

(1) The director shall adopt rules providing standards for apples, apricots, Italian prunes, peaches, sweet cherries, pears, potatoes, and asparagus and may adopt rules providing standards for any other fruit or vegetable. When establishing these standards, the director shall consider the factors of maturity, soundness, color, shape, size, and freedom from mechanical and plant pest injury and other factors important to marketing.

(2) The director shall adopt rules providing for mandatory inspection of apples, apricots, Italian prunes, peaches, sweet cherries, pears, and asparagus and may adopt rules providing for mandatory inspection of any other fruit or vegetable.

~~(3) The director may (, unless otherwise provided for by the laws of this state, or in this chapter, establish) adopt rules:~~

~~((1) Providing standards and sizes for grades and/or classifications especially provided for in this chapter for any horticultural plant or product;~~

~~— (2) Providing grades and/or classifications for any horticultural plant or product not especially provided for in this chapter. In establishing such standards for grades and/or classifications, the director shall take into account the factors of maturity, soundness, color, shape, size, and freedom from mechanical and plant pest injury. When adopting grades and/or classifications for any horticultural plant or product not especially provided for in this chapter the director may consider and adopt grades and/or classifications established by the secretary of agriculture of the United States in effect on July 1, 1963, and any subsequent amendment to such grades and/or classifications prescribed by the said secretary;~~

~~— (3)) (a) Fixing the sizes and dimensions of containers to be used for the packing or handling of any ((horticultural plant or product;~~

~~— (4) Concerning the inspection of any horticultural plant or product subject to the provisions of this chapter or in cooperation with the United States government or any other state;~~

~~— (5) Necessary to carry out the purpose and provisions of this chapter)) fruits or vegetables; and~~

(b) Establishing combination grades for fruits and vegetables. The standards for combination grades shall, by percentage quantities, include two or more of the grades provided for under this chapter.

Sec. 5. RCW 15.17.060 and 1963 c 122 s 6 are each amended to read as follows:

The director may adopt any United States ~~((grade and/or classification)) or other state's standard~~ for any ~~((horticultural plant or product especially provided for in this chapter if such United States grade and/or classification))~~ fruits and vegetables, if that standard is determined by the director to be substantially equivalent to or better than the ((minimum grade and/or classification especially provided for such horticultural plant or product in)) standard adopted under this chapter.

**Sec. 6.** RCW 15.17.080 and 1963 c 122 s 8 are each amended to read as follows:

It ~~((shall be))~~ is unlawful for any person to sell ~~((fresh fruits))~~ for fresh consumption any fresh fruits classified as culls under the provisions of this chapter or rules adopted hereunder unless such fruit is packed in one-half bushel or one bushel wooden baskets ring faced, with the fruit in the ring face representative of the size and quality of the fruit in such baskets. ~~((Such))~~ The baskets shall be lidded and the words "cull" including the kind of fruit and variety must appear on the top and side of each basket and on any label ~~((thereon))~~ in clear and legible letters at least two and one-half inches high. Every bill of lading, invoice, memorandum, and document referring to ~~((said))~~ the fruit shall designate them as culls.

**Sec. 7.** RCW 15.17.090 and 1963 c 122 s 9 are each amended to read as follows:

The director may approve and register a private grade or brand for any ~~((horticultural plant or product; PROVIDED, That such))~~ fruit or vegetable. The private grade or brand shall not be lower than the second grade and/or classification established under the provisions of this chapter or rules adopted ~~((hereunder))~~ under this chapter for ~~((such horticultural plant or product))~~ the fruit or vegetable.

**Sec. 8.** RCW 15.17.130 and 1963 c 122 s 13 are each amended to read as follows:

~~((The provisions of))~~ (1) This chapter ((shall)) does not apply:

~~((+))~~ (a) To the movement in bulk of any ((horticultural plant or product)) fruits or vegetables from the premises where they are grown or produced to a packing shed, warehouse, or processing plant ((within the area of production prior to inspection and/or grading where such inspection and/or grading is to be performed at such packing shed, warehouse, or processing plant; nor  
~~—(2))~~ for the purpose of storing, grading, packing, labeling, or processing prior to entering commercial channels for wholesale or retail sale;

~~(b) To any processed, canned, frozen, or dehydrated ((horticultural plants or products; nor~~

~~—(3) Shall this chapter prevent the manufacture of))~~ fruits or vegetables;

(c) To any infected ((horticultural plant or product)) or infested fruits or vegetables to be manufactured into byproducts or ((its shipment)) to be shipped to a byproducts plant; or

(d) To the sale of up to five hundred pounds per day of any fruit or vegetable by any producer or handler directly to an individual ultimate consumer unless otherwise established by rule for an individual commodity. These fruits and vegetables shall meet the requirements of RCW 15.17.210(1)(b).

(2) The inspection requirements of this chapter do not apply to the sale or transportation within a zone of production, as defined by rule, of any fruit or vegetable named in RCW 15.17.050(1) or any combination of those fruits and

vegetables to a fruit or produce stand or farmers market in a quantity specified by the director by rule.

Sec. 9. RCW 15.17.140 and 1963 c 122 s 14 are each amended to read as follows:

(1) Any person financially interested in any (~~horticultural plants or products~~) **fruits or vegetables** in this state may (~~apply to the director for~~) **request inspection and/or certification** (~~as to whether such horticultural plants or products meet the requirements provided for by the laws of this state, the provisions of this chapter or rules adopted hereunder, or the standards for grading and classifying such horticultural plants or products established by the secretary of the United States department of agriculture, or by any other state, or by contractual agreement between buyers and sellers of such horticultural plants or products~~) **services provided for those fruits or vegetables under this chapter.**

(2) To facilitate the movement or sale of fruits and vegetables or other agricultural commodities, the director may provide, if requested by growers or other interested persons, special inspections or certifications not otherwise authorized under this chapter and shall prescribe a fee for that service.

(3) Persons requesting services shall be responsible for payment of fees for those services prescribed by the director under RCW 15.17.150.

Sec. 10. RCW 15.17.150 and 1963 c 122 s 15 are each amended to read as follows:

The director shall (~~prescribe~~) adopt rules establishing the necessary fees to (~~be charged, (1) to the owner or his agent for the inspection and certification of any horticultural plants or products subject to the provisions of this chapter or rules adopted hereunder, (2) for inspection and certification when such inspection and certification is performed at the request of any person financially interested in any horticultural plants or products which are, or are not, subject to the provisions of this chapter or rules adopted hereunder, produced in, or imported into, this state~~) **recover the costs of providing inspection and/or certification or other requested services.**

(1) The fees (~~provided for in this section shall become~~) **are** due and payable (~~by the end of the next business day and if such fees are not paid within the prescribed time the director may withdraw inspection or refuse to perform any inspection or certification services for the person in arrears. PROVIDED, That the director in such instances may demand and collect inspection and certification fees prior to inspecting and certifying any horticultural plants or products for such person~~) **upon billing.**

(2) A late fee of one and one-half percent per month on the unpaid balance shall be assessed against persons more than thirty days in arrears.

(3) In addition to other penalties, the director may refuse to perform any inspection or certification service provided under this chapter for any person in arrears unless the person makes payment in full prior to such inspection or certification service.

(4) The director may refuse to perform inspection or certification service for any person who has failed to pay assessments required by law to any agricultural commodity commission.

Sec. 11. RCW 15.17.170 and 1963 c 122 s 17 are each amended to read as follows:

Every inspection certificate or other official document issued by the director under the provisions of this chapter shall be received in all the courts of the state as prima facie evidence of the statements therein.

Sec. 12. RCW 15.17.190 and 1963 c 122 s 19 are each amended to read as follows:

The director may enter during business hours and inspect any ~~((horticultural))~~ facility where any ~~((horticultural plants or products are produced))~~ fruits or vegetables are processed, stored, packed, delivered for shipment, loaded, shipped, being transported, or sold, and may inspect all ~~((such horticultural plants or products))~~ fruits or vegetables and the containers ~~((thereof))~~ and the equipment in ~~((any such horticultural))~~ that facility. The director may take for inspection ~~((such))~~ representative samples of ~~((such horticultural plants or products))~~ fruits or vegetables and ~~((such))~~ containers as may be necessary to determine whether or not ~~((provisions of))~~ this chapter or rules adopted ~~((hereunder))~~ under this chapter have been violated ~~((, and may subject such samples of horticultural plants or products to any method of inspection or testing. Should)),~~ If the director ((be)) is denied access to any ((horticultural facilities where such access was sought for the purpose set forth in this section, he)) facility, the director may apply to a court of competent jurisdiction for a search warrant authorizing access to ~~((such horticultural facilities for said purpose))~~ the facility. The court may upon such application issue ~~((the))~~ a search warrant for the purpose requested.

Sec. 13. RCW 15.17.200 and 1987 c 202 s 172 are each amended to read as follows:

~~((The director may affix to any such lot or part thereof of horticultural plants or products a tag or notice of warning that such lot of horticultural plants or products is held and stating the reasons therefor. It shall be unlawful for any person other than the director to detach, alter, deface, or destroy any such tag or notice affixed to any such lot, or part thereof, of horticultural plants or products; or to remove or dispose of such lot, or part thereof, in any manner or under conditions other than as prescribed in such tag or notice, except on the written permission of the director or the court.~~

~~—The director shall forthwith cause a notice of noncompliance to be served upon the person in possession of such lot of horticultural plants or products. The notice of noncompliance shall include a description of the lot, the place where, and the reason for which, it is held, and it shall give notice that such lot of horticultural plants or products is a public nuisance and subject to disposal as provided in this section unless, within a minimum of seventy-two hours or such~~

greater time as prescribed in the notice by the director, it is reconditioned or the deficiency is otherwise corrected so as to bring it into compliance:

— If the person so served is not the sole owner of such lot of horticultural plants or products, or does not have the authority as an agent for the owner to bring it into compliance, it shall be the duty of such person to notify the director forthwith in writing giving the names and addresses of the owner or owners and all other persons known to him or her to claim an interest in such lot of horticultural plants or products. Any person so served shall be liable for any loss sustained by such owner or other person whose name and address he or she has knowingly concealed from the director.

— If such lot of horticultural plants or products has not been reconditioned or the deficiency corrected so as to bring it into compliance within the time specified in the notice, the director shall forthwith cause a copy of such notice to be served upon all persons designated in writing by the person in possession of such lot of horticultural plants or products to be the owner or to claim an interest therein. Any notice required by this section may be served personally or by mail addressed to the person to be served at last known address.

— The director with the written consent of all such persons so served, is hereby authorized to destroy such lot of horticultural plants or products or otherwise abate the nuisance. If any such person fails or refuses to give such consent, then the director shall proceed in the manner provided for such purposes in this section:

— If such lot of horticultural plants or products is perishable or subject to rapid deterioration the director may, through the prosecutor in the county where such horticultural plants or products are held, file a verified petition in the superior court of the said county to destroy such lot of horticultural plants or products or otherwise abate the nuisance. The petition shall state the condition of such lot of horticultural plants or products, that such lot of horticultural plants or products is held, and that notice of noncompliance has been served as provided in this chapter. The court may then order that such lot of horticultural plants or products be forthwith destroyed or the nuisance otherwise abated as set forth in said order.

— If such lot of horticultural plants or products is not perishable or subject to rapid deterioration, the director may, through the prosecutor in the county in which it is located, file a petition within five days of the serving of the notice of noncompliance upon the owners or person in possession of such lot of horticultural plants or products in the superior court or district court of the said county for an order to show cause, returnable in five days, why such lot of horticultural plants or products should not be abated. The owner or person in possession, on his or her own motion within five days from the expiration of the time specified in the notice of noncompliance, may file a petition in such court for an order to show cause, returnable in five days, why such lot of horticultural plants or products should not be released to the petitioner and any warning tags previously affixed removed therefrom.

~~—The court may enter a judgment ordering that such lot of horticultural plants or products be condemned and destroyed in the manner directed by the court or relabeled, or denatured, or otherwise processed, or sold, or released upon such conditions as the court in its discretion may impose to insure that the nuisance will be abated. In the event of sale by the owner or the court, the costs of storage, handling, reconditioning, and disposal shall be deducted from the proceeds of the sale and the balance, if any, paid into the court for the owner)~~

(1) For the purposes of this section, "lot" means any lot or any part of a lot.

(2) When the director determines that any lot of fruits or vegetables fails to comply with the requirements of this chapter, the director may issue a hold order prohibiting the sale or movement of that lot except under conditions that may be prescribed.

(3)(a) Written notice of the hold order must be provided to the person in possession of the lot of fruits or vegetables and a tag may be affixed to the lot or its containers. It is unlawful for any person except the director to alter, deface, or remove the tag or notice or to move or allow the lot of fruits or vegetables to be moved except under the conditions prescribed on the tag or notice.

(b) The notice shall include:

(i) A description of the lot that is in noncompliance;

(ii) The location of the lot;

(iii) The reason that the hold order is placed on the lot;

(iv) Any reconditioning, other corrective measures, or diversion to processing that may be required to release the lot for sale;

(v) Time frames to affect the reconditioning or other corrective measures;  
and

(vi) A reference to the violation of this chapter that provides the basis for the hold order.

(c) Any corrective measures required by the notice pursuant to (b)(iv) of this subsection and the costs associated therewith are the sole responsibility of the person holding the fruits or vegetables for sale.

(4) Upon issuance of a hold order by the director under this section, the seller or holder of the fruits or vegetables may request a hearing. The request for hearing must be in writing and filed with the director. Any hearing shall be held in conformance with RCW 34.05.422 and 34.05.479.

**Sec. 14.** RCW 15.17.210 and 1994 c 67 s 2 are each amended to read as follows:

It is unlawful;

~~(1) To sell(, offer for sale, hold for sale, ship, or transport)) any ((horticultural plants or products))~~ fruits or vegetables:

~~((1) Subject to the requirements of RCW 15.17.040 unless they meet the requirements;~~

~~—(2))~~ (a) As meeting ((either)) the ((grades or classifications, or both, and)) standards ((and sizes for the grades or classifications as adopted or amended by

~~the director under RCW 15.17.050 unless they meet the standards and sizes for either grades or classifications, or both;~~

~~— (3) As meeting the standards and sizes for private grades or brands as approved by the director under RCW 15.17.090 unless they meet the standards and sizes)) for any fruit or vegetable as prescribed by the director unless they in fact do so;~~

~~((4)) (b) For which no standards have been established under this chapter unless ninety percent or more by weight or count, as determined by the director, are free from plant pest injury that has penetrated or damaged the edible portions and from worms, mold, slime, or decay;~~

~~(c) In containers other than the size and dimensions prescribed by the director(~~, when he or she has prescribed~~) by rule (~~the size and dimensions for containers in which any horticultural plants or products will be placed or packed. However, this subsection shall not apply when any such horticultural plants or products are being shipped or transported to a packing plant, processing plant, or cold storage facility for preparation for market~~);~~

~~((5)) (d) Unless the containers in which the (~~horticultural plants or products~~) fruits or vegetables are placed or packed are marked (~~as prescribed by the director, with either the proper United States or Washington grade or classification, or both, or private grades or brands of the horticultural plants or products;~~~~

~~— (6) Unless the containers in which the horticultural plants or products are placed or packed are marked as prescribed by the director, which may include the following)) with the proper grade and additional information as may be prescribed by rule. The additional information may include:~~

~~((a)) (i) The name and address of the grower, or packer, or distributor;~~

~~((b)) (ii) The varieties of the (~~horticultural plants or products~~) fruits or vegetables;~~

~~((c)) (iii) The size, weight, and either volume or count, or both, of the (~~horticultural plants or products~~) fruits or vegetables;~~

~~((7)) (e) Which are in containers marked or advertised for sale or sold as being either graded or classified, or both, according to the standards (~~and sizes~~) prescribed by the director (~~or by law~~) by rule unless the (~~horticultural plants or products~~) fruits or vegetables conform with (~~either grades or classifications, or both, and their standards and sizes~~) the standards;~~

~~((8)) (f) Which are deceptively packed;~~

~~((9)) (g) Which are deceptively arranged or displayed;~~

~~((10)) (h) Which are mislabeled; or~~

~~((11) Which are in containers marked with a Washington state grade designation for apples, unless the containers of apples were packed in the state of Washington;~~

~~— (12)) (i) Which do not conform to (~~the provisions of~~) this chapter or rules adopted (~~hereunder~~) under this chapter;~~



(2) For any person to ship or transport or any carrier to accept any lot of fruits or vegetables without an inspection certificate, permit, or certificate of compliance when the director has prescribed by rule that such products be accompanied by an inspection certificate, permit, or certificate of compliance. The inspection certificate, permit, or certificate of compliance shall be on a form prescribed by the director and may include methods of denoting that all assessments provided for by law have been paid before the fruits or vegetables may lawfully be delivered or accepted for shipment;

(3) For any person to refuse to submit any container, load, or display of fruits or vegetables for inspection by the director, or refuse to stop any vehicle or equipment containing such products for the purpose of inspection by the director;  
or

(4) For any person to move any fruits or vegetables or their containers to which any tag has been affixed, except as provided in RCW 15.17.200.

Sec. 15. RCW 15.17.230 and 1986 c 203 s 2 are each amended to read as follows:

For the purpose of this chapter the state shall be divided into not less than three ~~((horticulture))~~ fruit and vegetable inspection districts to which the director may assign ~~((one or more inspectors at large))~~ a district manager who ~~((as a representative of the director))~~ shall supervise and administer regulatory and inspection affairs of the districts ~~((+ PROVIDED, That for purposes of efficiency and economy the director may by rule promulgated in accordance with the Administrative Procedure Act establish or adjust district boundaries or abolish any district. PROVIDED, HOWEVER, That there shall be at least three districts in existence at all times)).~~ The director, by rule, shall establish the boundaries of the districts and may adjust the boundaries for purposes of efficiency and economy.

Sec. 16. RCW 15.17.240 and 1975 c 40 s 3 are each amended to read as follows:

(1) The ((inspectors at large in charge of such inspections)) district managers shall collect the fees ((therefor)) provided for under this chapter and deposit them in the ((horticultural)) fruit and vegetable district fund in any bank in the district approved for the deposit of state funds. ((The inspectors at large shall expend fees deposited in the horticultural district fund to assist in defraying the expenses of inspections and they)) The fees shall be used to carry out the provisions of this chapter and no appropriation is required for disbursement from the fund. District managers shall ((make)) approve payments from the ((horticultural)) fruit and vegetable inspection district funds to the ((horticultural)) fruit and vegetable inspection trust ((fund in Olympia as authorized by the director)) account in accordance with RCW 15.04.100 (as recodified by this act). ((Inspectors at large shall furnish bonds to the state in amounts set by the director of the department of general administration, pursuant to RCW 43.19.540, with sureties approved by the director of agriculture, conditioned upon the faithful handling of said funds for the purposes specified; and shall, on or before the tenth day of each month,

render)) On a monthly basis, each district manager shall provide to the director ~~((of agriculture))~~ a detailed account of the receipts and disbursements for the preceding month.

(2) Assessments and other fees approved by the director or authorized by law and collected by the district managers shall be deposited in the fruit and vegetable inspection district funds and distributed to the appropriate fund or agency.

Sec. 17. RCW 15.17.260 and 1963 c 122 s 26 are each amended to read as follows:

The director may bring an action to enjoin the violation of any provision of this chapter or rule adopted pursuant to this chapter in the superior court of Thurston county or of any county in which such violation occurs, notwithstanding the existence of other remedies at law.

Sec. 18. RCW 15.17.290 and 1963 c 122 s 30 are each amended to read as follows:

Any person ~~((violating the provisions of))~~ who violates this chapter or rules adopted (hereunder is guilty of a misdemeanor) under this chapter may be subject to:

(1) Suspension of any compliance agreement under this chapter to which the person is a party for a period not to exceed twelve consecutive months; and/or

(2) A civil penalty in an amount of not more than one thousand dollars for each violation.

Sec. 19. RCW 15.04.100 and 1987 c 393 s 2 are each amended to read as follows:

The director shall establish a ~~((horticulture))~~ fruit and vegetable inspection trust ((fund)) account to be derived from ~~((horticulture))~~ fruit and vegetable inspection district funds. The director shall adjust district payments so that the balance in the trust ~~((fund))~~ account shall not exceed three hundred thousand dollars. The director is authorized to make payments from the trust ~~((fund))~~ account to:

(1) Pay fees and expenses provided in the inspection agreement between the ~~((state))~~ department ~~((of agriculture))~~ and the agricultural marketing service of the United States department of agriculture;

(2) Assist ~~((horticulture))~~ fruit and vegetable inspection districts in temporary financial distress as a result of less than normal production of ~~((horticultural commodities; PROVIDED, That))~~ fruits and vegetables. Districts receiving such assistance shall ~~((make repayment to))~~ repay the trust ~~((fund))~~ account as district funds ~~((shall))~~ permit. Temporary financial distress and terms of the trust account repayment shall be determined by the director;

(3) Pay necessary administrative ~~((expenses))~~ expenditures for the commodity inspection division attributable to the supervision of the ~~((horticulture))~~ fruit and vegetable inspection services.

NEW SECTION. Sec. 20. A new section is added to chapter 15.17 RCW to be codified between RCW 15.17.140 and 15.17.150 to read as follows:

Any shipper or packer of apples, apricots, cherries, pears, peaches, Italian prunes, potatoes, or asparagus may petition the director for authority to issue certificates of compliance for each season. The director may issue certificate of compliance agreements, granting this authority, on terms and conditions defined by rule. Certificates of compliance shall only be issued for fruits or vegetables that are in full compliance with this chapter and the rules adopted under this chapter.

**NEW SECTION. Sec. 21.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his or her duly authorized representative.

(3) "Facility" means, but is not limited to, the premises where ginseng is grown, stored, dried, handled, or delivered for sale or transportation, or where records required by rule under this chapter are stored or kept, and all vehicles and equipment, whether aerial or surface, used to transport ginseng.

(4) "Grower" means a person who grows cultivated, wild simulated, and/or woodsgrown American ginseng and sells it to a dealer.

(5) "Person" means any individual, firm, partnership, corporation, company, society, or association, and every officer, agent, or employee thereof.

**NEW SECTION. Sec. 22.** The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose.

**NEW SECTION. Sec. 23.** In addition to the powers conferred on the director under this chapter, the director has the power to adopt rules:

(1) Establishing certification requirements for American ginseng (*Panax quinquefolius* L.).

Certification factors include:

- (a) Place of origin;
- (b) Whether the ginseng is wild or cultivated;
- (c) Weight; and
- (d) Date of harvest;

and may include whether the ginseng meets requirements for freedom from infestation by plant pests as required by the importing country;

(2) Requiring the registration of ginseng growers and of dealers who purchase and/or sell American ginseng for the purpose of foreign export; and

(3) Requiring that records be maintained by ginseng growers and by dealers who purchase or sell American ginseng for the purpose of foreign export.

The director may adopt any other rules necessary to comply with the requirements of the convention on international trade in endangered species of wild fauna and flora (27 U.S.T. 108); the endangered species act of 1973, as amended (16 U.S.C. Sec. 1531 et seq.); and 50 C.F.R. Part 23 (1995), as they

existed on June 6, 1996, or a subsequent date as may be provided by rule, consistent with the purposes of this section.

**NEW SECTION. Sec. 24.** (1) The director shall adopt rules establishing fees to recover the costs of providing ginseng certification activities authorized under this chapter. All moneys collected under this chapter shall be paid to the director, deposited in an account within the agricultural local fund, and used solely for carrying out the purposes of this chapter and rules adopted under this chapter.

(2) In addition to other penalties, the director may refuse to perform any inspection or certification service authorized under this chapter for any person in arrears unless the person makes payment in full prior to performing the service.

**NEW SECTION. Sec. 25.** The director may enter at reasonable times as determined by the director and inspect any facility and any records required under this chapter. The director may take for inspection those representative samples of ginseng necessary to determine whether or not this chapter or rules adopted under this chapter have been violated. If the director is denied access to any facility or records, the director may apply to a court of competent jurisdiction for a search warrant authorizing access to the facility or records. The court may upon such application issue a search warrant for the purpose requested.

**NEW SECTION. Sec. 26.** The director may bring an action to enjoin any violation of this chapter or rule adopted under this chapter in the superior court of Thurston county or of any county in which a violation occurs, notwithstanding the existence of other remedies at law.

**NEW SECTION. Sec. 27.** The director may cooperate with and enter into agreements with governmental agencies of this state, other states, and agencies of the federal government in order to carry out the purpose and provisions of this chapter.

**NEW SECTION. Sec. 28.** The department shall not disclose information obtained under this chapter regarding the purchases, sales, or production of an individual American ginseng grower or dealer, except for providing reports to the United States fish and wildlife service. This information is exempt from public disclosure required by chapter 42.17 RCW.

**NEW SECTION. Sec. 29.** It is unlawful for a person to sell, offer for sale, hold for sale, or ship or transport American ginseng for foreign export in violation of this chapter or rules adopted under this chapter.

**NEW SECTION. Sec. 30.** Any person who violates the provisions of this chapter or rules adopted under this chapter may be subject to:

(1) A civil penalty in an amount of not more than one thousand dollars for each violation; and/or

(2) Denial, revocation, or suspension of any registration or application for registration issued under this chapter. Upon notice by the director to deny,

revoke, or suspend a registration or application for registration, a person may request a hearing under chapter 34.05 RCW.

**NEW SECTION. Sec. 31.** The provisions of this chapter are cumulative and nonexclusive and do not affect any other remedy.

**NEW SECTION. Sec. 32.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**Sec. 33.** RCW 42.17.31909 and 1996 c 188 s 6 are each amended to read as follows:

Except under ~~((section 3 of this act))~~ section 28 of this act, information obtained regarding the purchases, sales, or production of an individual American ginseng grower or dealer is exempt from disclosure under this chapter.

**NEW SECTION. Sec. 34.** The repeal of RCW 15.17.115 and the enactment of chapter 15.— RCW (sections 21 through 32 of this act) does not repeal any rules adopted under the provisions of chapter 15.17 RCW not in conflict with the provisions of chapter 15.— RCW (sections 21 through 32 of this act) and in effect immediately prior to the repeal of any section under section 36 of this act. For the purpose of chapter 15.— RCW (sections 21 through 32 of this act) it shall be deemed that such rules have been adopted under the provisions of chapter 15.— RCW (sections 21 through 32 of this act) pursuant to the provisions of chapter 34.05 RCW.

**NEW SECTION. Sec. 35.** Sections 21 through 32 of this act constitute a new chapter in Title 15 RCW.

**NEW SECTION. Sec. 36.** The following acts or parts of acts are each repealed:

- (1) RCW 15.17.040 and 1963 c 122 s 4;
- (2) RCW 15.17.070 and 1963 c 122 s 7;
- (3) RCW 15.17.100 and 1994 c 67 s 1, 1990 c 19 s 1, & 1963 c 122 s 10;
- (4) RCW 15.17.110 and 1963 c 122 s 11;
- (5) RCW 15.17.115 and 1996 c 188 s 2;
- (6) RCW 15.17.120 and 1963 c 122 s 12;
- (7) RCW 15.17.160 and 1963 c 122 s 16;
- (8) RCW 15.17.180 and 1963 c 122 s 18;
- (9) RCW 15.17.220 and 1963 c 122 s 22;
- (10) RCW 15.17.250 and 1977 ex.s. c 26 s 1, 1969 ex.s. c 76 s 3, & 1963 c 122 s 25;
- (11) RCW 15.17.280 and 1963 c 122 s 32;
- (12) RCW 15.17.910 and 1963 c 122 s 28;
- (13) RCW 15.17.920 and 1963 c 122 s 29;
- (14) RCW 15.17.930 and 1963 c 122 s 34;
- (15) RCW 15.17.950 and 1963 c 122 s 35;

(16) RCW 15.04.020 and 1981 c 296 s 1, 1977 c 75 s 7, & 1961 c 11 s 15.04.020;

(17) RCW 15.04.030 and 1981 c 296 s 2 & 1961 c 11 s 15.04.030;

(18) RCW 15.04.040 and 1987 c 393 s 1, 1975-'76 2nd ex.s. c 34 s 11, & 1961 c 11 s 15.04.040;

(19) RCW 15.04.060 and 1961 c 11 s 15.04.060;

(20) RCW 15.04.070 and 1981 c 296 s 3 & 1961 c 11 s 15.04.070; and

(21) RCW 15.04.080 and 1961 c 11 s 15.04.080.

**NEW SECTION. Sec. 37.** (1) RCW 15.04.100 is recodified as a new section in chapter 15.17 RCW to be codified between RCW 15.17.240 and 15.17.260.

(2) RCW 15.17.130 is recodified as a new section in chapter 15.17 RCW to be codified between RCW 15.17.210 and 15.17.230.

**NEW SECTION. Sec. 38.** RCW 15.17.950 is decodified.

Passed the Senate March 7, 1998.

Passed the House February 27, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

## CHAPTER 155

[Substitute Senate Bill 6130]

### UNDERGROUND STORAGE TANK REGULATION—REVISIONS

AN ACT Relating to underground storage tanks; amending RCW 90.76.010, 90.76.020, 90.76.040, 90.76.050, 90.76.060, and 90.76.090; adding new sections to chapter 43.131 RCW; repealing RCW 90.76.030 and 90.76.903; and providing an expiration date.

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

**Sec. I.** RCW 90.76.010 and 1989 c 346 s 2 are each amended to read as follows:

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

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

(2) "Director" means the director of the department.

(3) "Facility compliance tag" means a marker, constructed of metal, plastic, or other durable material, that clearly identifies all qualifying underground storage tanks on the particular site for which it is issued.

(4) "Federal act" means the federal resource conservation and recovery act, as amended (42 U.S.C. Sec. 6901, et seq.).

~~((4))~~ (5) "Federal regulations" means the underground storage tanks regulations (40 C.F.R. Secs. 280 and 281) adopted by the United States environmental protection agency under the federal act.

Except as provided in this section and any rules adopted by the department under this chapter, the definitions contained in the federal regulations apply to the terms in this chapter.

**Sec. 2.** RCW 90.76.020 and 1989 c 346 s 3 are each amended to read as follows:

(1) ~~((By July 1, 1990;))~~ The department shall adopt rules establishing requirements for all underground storage tanks that are regulated under the federal act, taking into account the various classes or categories of tanks to be regulated. The rules must be consistent with and no less stringent than the federal regulations and consist of requirements for the following:

- (a) New underground storage tank system design, construction, installation, and notification;
- (b) Upgrading existing underground storage tank systems;
- (c) General operating requirements;
- (d) Release detection;
- (e) Release reporting;
- (f) Out-of-service underground storage tank systems and closure; and
- (g) Financial responsibility for underground storage tanks containing regulated substances.

(2) ~~((By July 1, 1990;))~~ The department shall adopt rules:

- (a) Establishing physical site criteria to be used in designating local environmentally sensitive areas;
- (b) Establishing procedures for local government application for this designation; and
- (c) Establishing procedures for local government adoption and department approval of rules more stringent than the state-wide standards in these designated areas.

(3) ~~((By July 1, 1990;))~~ The department shall establish by rule an administrative and enforcement program that is consistent with and no less stringent than the program required under the federal regulations in the areas of:

- (a) Compliance monitoring, including procedures for recordkeeping and a program for systematic inspections;
- (b) Enforcement;
- (c) Public participation; and
- (d) Information sharing.

~~(4) ((By July 1, 1990, the department shall establish a program that provides for the tagging of underground storage tanks. Tanks are not eligible for tagging unless the owner or operator is in compliance with the requirements of this chapter and annual state and local tank fees have been remitted. The tank tagging program shall be designed to ensure that tags will be clearly identifiable to persons delivering regulated substances to underground storage tanks.~~

(5)) The department shall establish a program that provides for the annual licensing of underground storage tanks. The license shall take the form of a tank endorsement on the facility's annual master business license issued by the department of licensing. A tank is not eligible for a license unless the owner or operator can demonstrate compliance with the requirements of this chapter and the annual tank fees have been remitted. The department may revoke a tank

license if a facility is not in compliance with this chapter. The master business license shall be displayed by the tank owner or operator in a location clearly identifiable.

(5)(a) The department shall issue a one-time "facility compliance tag" to correspond with the December 22, 1998, underground storage tank compliance deadline for corrosion, spill, and overflow protection. Facility compliance tags may only be issued for facilities that have installed the equipment required to meet corrosion, spill, and overflow protection standards that are required by December 22, 1998, and at the time of tag issuance have demonstrated financial responsibility and paid annual tank fees. The facility shall continue to maintain compliance with corrosion, spill, and overflow protection standards, and financial responsibility, and have remitted annual tank fees to display a facility compliance tag. The facility compliance tag shall be displayed on the fire emergency shutoff device, or in the absence of such a device in close proximity to the fill pipes and clearly identifiable to persons delivering regulated substance to underground storage tanks.

(b) The department may revoke a facility compliance tag if a facility is not in compliance with the requirements needed to obtain or display the tag,

(6) The department may establish programs to certify persons who conduct inspections, testing, closure, cathodic protection, interior tank lining, corrective action, or other activities required under this chapter. Certification programs shall be designed to ensure that each certification will be effective in all jurisdictions of the state.

((6)) (7) When adopting rules under this chapter, the department shall consult with the state building code council to ensure coordination with the building and fire codes adopted under chapter 19.27 RCW.

**Sec. 3.** RCW 90.76.040 and 1989 c 346 s 5 are each amended to read as follows:

(1) A city, town, or county may apply to the department to have an area within its jurisdictional boundaries designated an environmentally sensitive area. A city, town, or county may submit a joint application with any other city, town, or county for joint administration under chapter 39.34 RCW of a single environmentally sensitive area located in both jurisdictions.

(2) A city, town, or county may adopt proposed ordinances or resolutions establishing requirements for underground storage tanks located within an environmentally sensitive area that are more stringent than the state-wide standards established under RCW 90.76.020. ~~((If application for the designation of an environmentally sensitive area is made later than five years after the date of final adoption of the rules required under this chapter,))~~ Proposed local ordinances and resolutions shall only apply to new underground storage tank installations. The local government adopting the ordinances and resolutions shall submit them to the department for approval. Disapproved ordinances and resolutions may be modified and resubmitted to the department for approval.



Proposed local ordinances and resolutions become effective when approved by the department.

(3) The department shall approve or disapprove each proposed local ordinance or resolution based on the following criteria:

(a) The area to be regulated is found to be an environmentally sensitive area based on rules adopted by the department; and

(b) The proposed local regulations are reasonably consistent with previously approved local regulations for similar environmentally sensitive areas.

(4) A city, town, or county for which a proposed local ordinance or resolution establishing more stringent requirements is approved by the department may establish local tank fees that meet the requirements of RCW 90.76.090, if such fees are necessary for enhanced program administration or enforcement.

**Sec. 4.** RCW 90.76.050 and 1989 c 346 s 6 are each amended to read as follows:

~~((Regulated substances shall not be delivered to any underground storage tank in the state required to be tagged under RCW 90.76.020 unless proof of valid tagging is displayed on such tank itself or the dispensing or measuring device connected thereto or, where appropriate, in the office or kiosk of the facility where the tank is located.))~~ (1) Between the effective date of this section and December 22, 1998, persons delivering regulated substances to underground storage tanks shall not deliver to facilities that do not have an underground storage tank license. This subsection expires December 22, 1998.

(2) After December 22, 1998, persons delivering regulated substances to underground storage tanks shall not deliver to facilities that do not have a facility compliance tag displayed as required in RCW 90.76.020(5)(a).

(3) A supplier shall not refuse to deliver regulated substances to an underground storage tank regulated under this chapter on the basis of its potential to leak contents where the ((tank)) facility is either tagged as required in ((RCW 90.76.020)) this chapter or is in compliance with federal underground storage tank regulations and any state or local regulations then in effect. This section does not apply to a supplier who does not directly transfer a regulated substance into an underground storage tank.

**Sec. 5.** RCW 90.76.060 and 1989 c 346 s 7 are each amended to read as follows:

(1) If necessary to determine compliance with the requirements of this chapter, an authorized representative of the state engaged in compliance inspections, monitoring, and testing may, by request, require an owner or operator to submit relevant information or documents. The department may subpoena witnesses, documents, and other relevant information that the department deems necessary. In the case of any refusal to obey the subpoena, the superior court for any county in which the person is found, resides, or transacts business has jurisdiction to issue an order requiring the person to appear before the department

and give testimony or produce documents. Any failure to obey the order of the court may be punished by the court as contempt.

(2) Any authorized representative of the state may require an owner or operator to conduct monitoring or testing.

(3) Upon reasonable notice, an authorized representative of the state may enter a premises or site subject to regulation under this chapter or in which records relevant to the operation of an underground storage tank system are kept. In the event of an emergency or in circumstances where notice would undermine the effectiveness of an inspection, notice is not required. The authorized representative may copy these records, obtain samples of regulated substances, and inspect or conduct monitoring or testing of an underground storage tank system.

(4) For purposes of this section, the term "authorized representative" or "authorized representative of the state" means an enforcement officer, employee, or representative of the department (~~or a local government unit that has obtained enforcement authority under RCW 90.76.030~~).

**Sec. 6.** RCW 90.76.090 and 1989 c 346 s 10 are each amended to read as follows:

(1) ~~((An annual state tank fee of sixty dollars per tank for fiscal years ending June 30, 1990, and June 30, 1991, and seventy-five dollars per tank each fiscal year thereafter, shall be paid no later than the December 31st of each fiscal year))~~  
An annual tank fee of one hundred dollars per tank is effective from July 1, 1998, to June 30, 1999. Annually, beginning on July 1, 1999, and upon a finding by the department that a fee increase is necessary, the previous tank fee amount may be increased up to the fiscal growth factor for the next year. The fiscal growth factor is calculated by the office of financial management under RCW 43.135.025 for the upcoming biennium. The department shall use the fiscal growth factor to calculate the fee for the next year and shall publish the new fee by March 1st before the year for which the new fee is effective. The new tank fee is effective from July 1st to June 30th of every year. The tank fee shall be paid by every person who:

(a) Owns an underground storage tank located in this state; and

(b) Was required to provide notification to the department under the federal act.

This fee is not required of persons who have (i) permanently closed their tanks, and (ii) if required, have completed corrective action in accordance with the rules adopted under this chapter.

(2) The department may authorize the imposition of additional annual local tank fees in environmentally sensitive areas designated under RCW 90.76.040. Annual local tank fees may not exceed fifty percent of the annual state tank fee.

(3) State and local tank fees collected under this section shall be deposited in the account established under RCW 90.76.100.

(4) Other than the annual local tank fee authorized for environmentally sensitive areas, no local government may levy an annual tank fee on the ownership or operation of an underground storage tank.

**NEW SECTION. Sec. 7.** A new section is added to chapter 43.131 RCW to read as follows:

The underground storage tank program shall be terminated on July 1, 2009, as provided in section 8 of this act.

**NEW SECTION. Sec. 8.** A new section is added to chapter 43.131 RCW to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective July 1, 2010:

- (1) RCW 90.76.005 and 1989 c 346 s 1;
- (2) RCW 90.76.010 and 1998 c . . . s 1 (section 1 of this act) & 1989 c 346 s 2;
- (3) RCW 90.76.020 and 1998 c . . . s 2 (section 2 of this act) & 1989 c 346 s 3;
- (4) RCW 90.76.040 and 1998 c . . . s 3 (section 3 of this act) & 1989 c 346 s 5;
- (5) RCW 90.76.050 and 1998 c . . . s 4 (section 4 of this act) & 1989 c 346 s 6;
- (6) RCW 90.76.060 and 1998 c . . . s 5 (section 5 of this act) & 1989 c 346 s 7;
- (7) RCW 90.76.070 and 1989 c 346 s 8;
- (8) RCW 90.76.080 and 1995 c 403 s 639 & 1989 c 346 s 9;
- (9) RCW 90.76.090 and 1998 c . . . s 6 (section 6 of this act) & 1989 c 346 s 10;
- (10) RCW 90.76.100 and 1991 sp.s. c 13 s 72 & 1989 c 346 s 11;
- (11) RCW 90.76.110 and 1991 c 83 s 1 & 1989 c 346 s 12;
- (12) RCW 90.76.120 and 1989 c 346 s 13;
- (13) RCW 90.76.900 and 1989 c 346 s 15;
- (14) RCW 90.76.901 and 1989 c 346 s 14; and
- (15) RCW 90.76.902 and 1989 c 346 s 18.

**NEW SECTION. Sec. 9.** The following acts or parts of acts are each repealed:

- (1) RCW 90.76.030 and 1989 c 346 s 4; and
- (2) RCW 90.76.903 and 1989 c 346 s 17.

Passed the Senate March 7, 1998.

Passed the House March 4, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

## CHAPTER 156

[Engrossed Substitute Senate Bill 6203]

## SOLID WASTE PERMITTING—REVISIONS

AN ACT Relating to solid waste permitting; amending RCW 70.95.020, 70.95.170, 70.95.190, and 43.21B.110; adding new sections to chapter 70.95 RCW; and prescribing penalties.

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

**Sec. 1.** RCW 70.95.020 and 1985 c 345 s 2 are each amended to read as follows:

The purpose of this chapter is to establish a comprehensive state-wide program for solid waste handling, and solid waste recovery and/or recycling which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of this state. To this end it is the purpose of this chapter:

(1) To assign primary responsibility for adequate solid waste handling to local government, reserving to the state, however, those functions necessary to assure effective programs throughout the state;

(2) To provide for adequate planning for solid waste handling by local government;

(3) To provide for the adoption and enforcement of basic minimum performance standards for solid waste handling;

(4) To provide technical and financial assistance to local governments in the planning, development, and conduct of solid waste handling programs;

(5) To encourage storage, proper disposal, and recycling of discarded vehicle tires and to stimulate private recycling programs throughout the state; and

(6) To encourage the development and operation of waste recycling facilities and activities needed to accomplish the management priority of waste recycling and to promote consistency in the permitting requirements for such facilities and activities throughout the state.

It is the intent of the legislature that local governments be encouraged to use the expertise of private industry and to contract with private industry to the fullest extent possible to carry out solid waste recovery and/or recycling programs.

NEW SECTION. **Sec. 2.** A new section is added to chapter 70.95 RCW to read as follows:

(1) The department may by rule exempt a solid waste from the permitting requirements of this chapter for one or more beneficial uses. In adopting such rules, the department shall specify both the solid waste that is exempted from the permitting requirements and the beneficial use or uses for which the solid waste is so exempted. The department shall consider: (a) Whether the material will be beneficially used or reused; and (b) whether the beneficial use or reuse of the material will present threats to human health or the environment.

(2) The department may also exempt a solid waste from the permitting requirements of this chapter for one or more beneficial uses by approving an

application for such an exemption. The department shall establish by rule procedures under which a person may apply to the department for such an exemption. The rules shall establish criteria for providing such an exemption, which shall include, but not be limited to: (a) The material will be beneficially used or reused; and (b) the beneficial use or reuse of the material will not present threats to human health or the environment. Rules adopted under this subsection shall identify the information that an application shall contain. Persons seeking such an exemption shall apply to the department under the procedures established by the rules adopted under this subsection.

(3) After receipt of an application filed under rules adopted under subsection (2) of this section, the department shall review the application to determine whether it is complete, and forward a copy of the completed application to all jurisdictional health departments for review and comment. Within forty-five days, the jurisdictional health departments shall forward to the department their comments and any other information they deem relevant to the department's decision to approve or disapprove the application. Every complete application shall be approved or disapproved by the department within ninety days of receipt. If the application is approved by the department, the solid waste is exempt from the permitting requirements of this chapter when used anywhere in the state in the manner approved by the department. If the composition, use, or reuse of the solid waste is not consistent with the terms and conditions of the department's approval of the application, the use of the solid waste remains subject to the permitting requirements of this chapter.

(4) The department shall establish procedures by rule for providing to the public and the solid waste industry notice of and an opportunity to comment on each application for an exemption under subsection (2) of this section.

(5) Any jurisdictional health department or applicant may appeal the decision of the department to approve or disapprove an application under subsection (3) of this section. The appeal shall be made to the pollution control hearings board by filing with the hearings board a notice of appeal within thirty days of the decision of the department. The hearings board's review of the decision shall be made in accordance with chapter 43.21B RCW and any subsequent appeal of a decision of the board shall be made in accordance with RCW 43.21B.180.

(6) This section shall not be deemed to invalidate the exemptions or determinations of nonapplicability in the department's solid waste rules as they exist on the effective date of this section, which exemptions and determinations are recognized and confirmed subject to the department's continuing authority to modify or revoke those exemptions or determinations by rule.

**Sec. 3.** RCW 70.95.170 and 1997 c 213 s 2 are each amended to read as follows:

Except as provided otherwise in section 5 or 6 of this act, after approval of the comprehensive solid waste plan by the department no solid waste handling facility or facilities shall be maintained, established, or modified until the county, city, or other person operating such site has obtained a permit (~~from the~~

~~jurisdictional health department)) pursuant to ((the provisions of)) RCW 70.95.180 or 70.95.190.~~

Sec. 4. RCW 70.95.190 and 1997 c 213 s 4 are each amended to read as follows:

(1) Every permit for an existing solid waste handling facility issued pursuant to RCW 70.95.180 shall be renewed at least every five years on a date established by the jurisdictional health department having jurisdiction of the site and as specified in the permit. If a permit is to be renewed for longer than one year, the local jurisdictional health department may hold a public hearing before making such a decision. Prior to renewing a permit, the health department shall conduct a review as it deems necessary to assure that the solid waste handling facility or facilities located on the site continues to meet minimum functional standards of the department, applicable local regulations, and are not in conflict with the approved solid waste management plan. A jurisdictional health department shall approve or disapprove a permit renewal within forty-five days of conducting its review. The department shall review and may appeal the renewal as set forth for the approval of permits in RCW 70.95.185.

(2) The jurisdictional board of health may establish reasonable fees for permits reviewed under this section. All permit fees collected by the health department shall be deposited in the treasury and to the account from which the health department's operating expenses are paid.

NEW SECTION. Sec. 5. A new section is added to chapter 70.95 RCW to read as follows:

(1) Notwithstanding any other provision of this chapter, the department may by rule exempt from the requirements to obtain a solid waste handling permit any category of solid waste handling facility that it determines to:

(a) Present little or no environmental risk; and  
 (b) Meet the environmental protection and performance requirements required for other similar solid waste facilities.

(2) This section does not apply to any facility or category of facilities that:

(a) Receives municipal solid waste destined for final disposal, including but not limited to transfer stations, landfills, and incinerators;

(b) Applies putrescible solid waste on land for final disposal purposes;

(c) Handles mixed solid wastes that have not been processed to segregate solid waste materials destined for disposal from other solid waste materials destined for a beneficial use;

(d) Receives or processes organic waste materials into compost in volumes that generally far exceed those handled by municipal park departments, master gardening programs, and households; or

(e) Receives solid waste destined for recycling or reuse, the operation of which is determined by the department to present risks to human health and the environment.

(3) Rules adopted under this section shall contain such terms and conditions as the department deems necessary to ensure compliance with applicable statutes and rules. If a facility does not operate in compliance with the terms and conditions established for an exemption under subsection (1) of this section, the facility is subject to the permitting requirements for solid waste handling under this chapter.

(4) This section shall not be deemed to invalidate the exemptions or determinations of nonapplicability in the department's solid waste rules as they exist on the effective date of this section, which exemptions and determinations are recognized and confirmed subject to the department's continuing authority to modify or revoke those exemptions or determinations by rule.

**NEW SECTION.** Sec. 6. A new section is added to chapter 70.95 RCW to read as follows:

(1) Notwithstanding any other provisions of this chapter, the department shall adopt rules:

(a) Describing when a jurisdictional health department may, at its discretion, waive the requirement that a permit be issued for a facility under this chapter if other air, water, or environmental permits are issued for the same facility. As used in this section, a jurisdictional health department's waiving the requirement that a permit be issued for a facility under this chapter based on the issuance of such other permits for the facility is the health department's "deferring" to the other permits; and

(b) Allowing deferral only if the applicant and the jurisdictional health department demonstrate that other permits for the facility will provide a comparable level of protection for human health and the environment that would be provided by a solid waste handling permit.

(2) This section does not apply to any transfer station, landfill, or incinerator that receives municipal solid waste destined for final disposal.

(3) If, before the effective date of this section, either the department or a jurisdictional health department has deferred solid waste permitting or regulation of a solid waste facility to permitting or regulation under other environmental permits for the same facility, such deferral is valid and shall not be affected by the rules developed under subsection (1) of this section.

(4) Rules adopted under this section shall contain such terms and conditions as the department deems necessary to ensure compliance with applicable statutes and rules.

**NEW SECTION.** Sec. 7. A new section is added to chapter 70.95 RCW to read as follows:

The department may assess a civil penalty in an amount not to exceed one thousand dollars per day per violation to any person exempt from solid waste permitting in accordance with section 2 or 5 of this act who fails to comply with the terms and conditions of the exemption. Each such violation shall be a

separate and distinct offense, and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation.

**Sec. 8.** RCW 43.21B.110 and 1993 c 387 s 22 are each amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, the administrator of the office of marine safety, and the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, or local health departments:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and 90.56.330.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070, 90.14.130, and 90.48.120.

(c) The issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, ~~((or))~~ the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under section 2 of this act.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(f) Any other decision by the department, the administrator of the office of marine safety, or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Proceedings by the department relating to general adjudications of water rights pursuant to chapter 90.03 or 90.44 RCW.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

**NEW SECTION.** **Sec. 9.** A new section is added to chapter 70.95 RCW to read as follows:

Nothing in chapter . . . , Laws of 1998 (this act) may be construed to affect chapter 81.77 RCW and the authority of the utilities and transportation commission.



Passed the Senate March 7, 1998.  
Passed the House March 3, 1998.  
Approved by the Governor March 25, 1998.  
Filed in Office of Secretary of State March 25, 1998.

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## CHAPTER 157

[Engrossed Senate Bill 6305]

### DEATH BENEFITS FOR CERTAIN GENERAL AUTHORITY PEACE OFFICERS

AN ACT Relating to death and disability benefits for certain general authority police officers; amending RCW 41.20.060; adding a new section to chapter 41.40 RCW; adding a new section to chapter 41.20 RCW; creating new sections; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 41.40 RCW under the subchapter heading "Provisions Applicable to Plan I and Plan II" to read as follows:

(1) A one hundred fifty thousand dollar death benefit for members who had the opportunity to transfer to the law enforcement officers' and firefighters' retirement system pursuant to chapter 502, laws of 1993, but elected to remain in the public employees' retirement system, shall be paid to the member's estate, or such person or persons, trust, or organization as the member has nominated by written designation duly executed and filed with the department. If there is no designated person or persons still living at the time of the member's death, the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) Subject to subsection (3) of this section, the benefit under this section shall be paid only where death occurs as a result of injuries sustained in the course of employment as a general authority police officer. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050.

(3) The benefit under this section shall not be paid in the event the member was in the act of committing a felony when the fatal injuries were suffered.

**NEW SECTION. Sec. 2.** The purpose of sections 2 through 5 of this act is to clarify that the intent of the legislature in enacting RCW 41.20.060, insofar as that section provides benefits to members for disabilities incurred in the line of duty, was to provide a statute in the nature of a workers' compensation act that provides compensation to employees for personal injuries incurred in the course of employment. Accordingly this act amends and divides RCW 41.20.060 into two separate sections. Section 3 of this act clarifies and emphasizes the legislature's intent that the disability benefits granted by RCW 41.20.060, as amended, are granted only to those members who become disabled by any injury or incapacity that is incurred in the line of duty. Section 4 of this act continues

to provide disability retirement benefits to members who become disabled by an injury or incapacity not incurred in the line of duty.

**Sec. 3.** RCW 41.20.060 and 1973 1st ex.s. c 181 s 4 are each amended to read as follows:

Whenever any person, while serving as a policeman in any such city becomes physically disabled by reason of any bodily injury received in the immediate or direct performance or discharge of his duties as a policeman, or becomes incapacitated for service on account of any duty connected disability, such incapacity not having been caused or brought on by dissipation or abuse, of which the board shall be judge, the board may, upon his written request filed with the secretary, or without such written request, if it deems it to be for the benefit of the public, retire such person from the department, and order and direct that he be paid from the fund during his lifetime, a pension equal to fifty percent of the amount of salary at any time hereafter attached to the position which he held in the department at the date of his retirement, but not to exceed an amount equivalent to fifty percent of the salary of captain except as to a position higher than that of captain held for at least three calendar years prior to the date of retirement in which case as to such position the provisions of RCW 41.20.050 shall apply, and all existing pensions shall be increased to not less than three hundred dollars per month as of April 25, 1973: PROVIDED, That where, at the time of retirement hereafter for duty connected disability under this section, such person has served honorably for a period of more than twenty-five years as a member, in any capacity, of the regularly constituted police department of a city subject to the provisions of this chapter, the foregoing percentage factors to be applied in computing the pension payable under this section shall be increased by two percent of his salary per year for each full year of such additional service to a maximum of five additional years.

Whenever such disability ceases, the pension shall cease, and such person shall be restored to active service at the same rank he held at the time of his retirement, and at the current salary attached to said rank at the time of his return to active service.

Disability benefits provided for by this chapter shall not be paid when the policeman is disabled while he is engaged for compensation in outside work not of a police or special police nature.

**NEW SECTION. Sec. 4.** A new section is added to chapter 41.20 RCW to read as follows:

Whenever any person, while serving as a policeman in any such city becomes physically disabled by reason of any bodily injury not incurred in the line of duty, or becomes incapacitated for service, such incapacity not having been caused or brought on by dissipation or abuse, of which the board shall be judge, the board may, upon his written request filed with the secretary, or without such written request, if it deems it to be for the benefit of the public, retire such person from the department, and order and direct that he be paid from the fund during his

lifetime, a pension equal to fifty percent of the amount of salary at any time hereafter attached to the position which he held in the department at the date of his retirement, but not to exceed an amount equivalent to fifty percent of the salary of captain, except as to a position higher than that of captain held for at least three calendar years prior to the date of retirement, in which case as to such position the provisions of RCW 41.20.050 shall apply, and all existing pensions shall be increased to not less than three hundred dollars per month as of April 25, 1973: PROVIDED, That where, at the time of retirement hereafter for disability under this section, such person has served honorably for a period of more than twenty-five years as a member, in any capacity, of the regularly constituted police department of a city subject to the provisions of this chapter, the foregoing percentage factors to be applied in computing the pension payable under this section shall be increased by two percent of his salary per year for each full year of such additional service, to a maximum of five additional years.

Whenever such disability ceases, the pension shall cease, and such person shall be restored to active service at the same rank he held at the time of his retirement, and at the current salary attached to said rank at the time of his return to active service.

Disability benefits provided for by this chapter shall not be paid when the policeman is disabled while he is engaged for compensation in outside work not of a police or special police nature.

NEW SECTION. Sec. 5. The provisions of section 3 of this act apply retrospectively to all line of duty disability retirement allowances heretofore granted under chapter 41.20 RCW.

NEW SECTION. Sec. 6. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the Senate March 9, 1998.

Passed the House March 5, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

## CHAPTER 158

[Senate Bill 6329]

### DISCLOSURE OF HEALTH CARE INFORMATION WITHOUT PATIENT AUTHORIZATION— INVESTIGATIONS BY COUNTY CORONERS AND MEDICAL EXAMINERS

AN ACT Relating to disclosure of health care information without patient's authorization; and amending RCW 70.02.050.

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

Sec. 1. RCW 70.02.050 and 1993 c 448 s 4 are each amended to read as follows:

(1) A health care provider may disclose health care information about a patient without the patient's authorization to the extent a recipient needs to know the information, if the disclosure is:

(a) To a person who the provider reasonably believes is providing health care to the patient;

(b) To any other person who requires health care information for health care education, or to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; or for assisting the health care provider in the delivery of health care and the health care provider reasonably believes that the person:

(i) Will not use or disclose the health care information for any other purpose; and

(ii) Will take appropriate steps to protect the health care information;

(c) To any other health care provider reasonably believed to have previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider in writing not to make the disclosure;

(d) To any person if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual, however there is no obligation under this chapter on the part of the provider to so disclose;

(e) Oral, and made to immediate family members of the patient, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the health care provider in writing not to make the disclosure;

(f) To a health care provider who is the successor in interest to the health care provider maintaining the health care information;

(g) For use in a research project that an institutional review board has determined:

(i) Is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(ii) Is impracticable without the use or disclosure of the health care information in individually identifiable form;

(iii) Contains reasonable safeguards to protect the information from redisclosure;

(iv) Contains reasonable safeguards to protect against identifying, directly or indirectly, any patient in any report of the research project; and

(v) Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(h) To a person who obtains information for purposes of an audit, if that person agrees in writing to:

(i) Remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(ii) Not to disclose the information further, except to accomplish the audit or report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient, or other unlawful conduct by the health care provider;

(i) To an official of a penal or other custodial institution in which the patient is detained;

(j) To provide directory information, unless the patient has instructed the health care provider not to make the disclosure;

(k) In the case of a hospital or health care provider to provide, in cases reported by fire, police, sheriff, or other public authority, name, residence, sex, age, occupation, condition, diagnosis, or extent and location of injuries as determined by a physician, and whether the patient was conscious when admitted.

(2) A health care provider shall disclose health care information about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal licensure, certification or registration rules or laws; or when needed to protect the public health;

(b) To federal, state, or local law enforcement authorities to the extent the health care provider is required by law;

(c) To county coroners and medical examiners for the investigations of deaths;

(d) Pursuant to compulsory process in accordance with RCW 70.02.060.

(3) All state or local agencies obtaining patient health care information pursuant to this section shall adopt rules establishing their record acquisition, retention, and security policies that are consistent with this chapter.

Passed the Senate February 12, 1998.

Passed the House March 4, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

## CHAPTER 159

[Senate Bill 6400]

### WASHINGTON TELEPHONE ASSISTANCE PROGRAM EXTENSION

AN ACT Relating to extending the Washington telephone assistance program; and amending 1993 c 249 s 3 (uncodified).

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

**Sec. 1.** 1993 c 249 s 3 (uncodified) is amended to read as follows:

RCW 80.36.410 through 80.36.470 shall expire June 30, (~~1998, unless extended by the legislature~~) 2003.

Passed the Senate February 12, 1998.  
Passed the House March 6, 1998.  
Approved by the Governor March 25, 1998.  
Filed in Office of Secretary of State March 25, 1998.

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**CHAPTER 160**

[Engrossed Substitute Senate Bill 6418]

**IMPLEMENTATION OF AMENDMENTS RELATING TO CHILD SUPPORT IN FEDERAL PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996**

AN ACT Relating to implementing amendments relating to child support contained in the federal personal responsibility and work opportunity reconciliation act of 1996; amending RCW 26.23.050, 26.23.055, 26.23.120, 26.23.040, and 26.23.060; reenacting and amending RCW 74.20A.080; adding a new section to chapter 26.23 RCW; prescribing penalties; and providing an effective date.

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

**Sec. 1.** RCW 74.20A.080 and 1997 c 130 s 7 and 1997 c 58 s 907 are each reenacted and amended to read as follows:

(1) The secretary may issue to any person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States, an order to withhold and deliver property of any kind, including but not restricted to earnings which are or might become due, owing, or belonging to the debtor, when the secretary has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States property which is or might become due, owing, or belonging to said debtor. Such order to withhold and deliver may be issued:

(a) At any time, if a responsible parent's support order:

(i) Contains notice that withholding action may be taken against earnings, wages, or assets without further notice to the parent; or

(ii) Includes a statement that other income-withholding action under this chapter may be taken without further notice to the responsible parent;

(b) Twenty-one days after service of a notice of support debt under RCW 74.20A.040;

(c) Twenty-one days after service of a notice and finding of parental responsibility under RCW 74.20A.056;

(d) Twenty-one days after service of a notice of support owed under RCW 26.23.110;

(e) Twenty-one days after service of a notice and finding of financial responsibility under RCW 74.20A.055; or

(f) When appropriate under RCW 74.20A.270.

(2) The order to withhold and deliver shall:

(a) State the amount to be withheld on a periodic basis if the order to withhold and deliver is being served to secure payment of monthly current support;

(b) State the amount of the support debt accrued;

(c) State in summary the terms of RCW 74.20A.090 and 74.20A.100;

(d) Be served:

(i) In the manner prescribed for the service of a summons in a civil action;

(ii) By certified mail, return receipt requested; ~~((or))~~

(iii) By electronic means if there is an agreement between the secretary and the person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States to accept service by electronic means; or

(iv) By regular mail to a responsible parent's employer unless the division of child support reasonably believes that service of process in the manner prescribed in (d)(i) or (ii) of this subsection is required for initiating an action to ensure employer compliance with the withholding requirement.

(3) The division of child support may use uniform interstate withholding forms adopted by the United States department of health and human services to take withholding actions under this section when the responsible parent is owed money or property that is located in another state.

(4) Any person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States upon whom service has been made is hereby required to:

(a) Answer said order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of therein; and

(b) Provide further and additional answers when requested by the secretary.

(5) The returned answer or a payment remitted to the division of child support by the employer constitutes proof of service of the notice of payroll deduction in the case where the notice was served by regular mail.

(6) Any such person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States in possession of any property which may be subject to the claim of the department shall:

(a)(i) Immediately withhold such property upon receipt of the order to withhold and deliver; and

(ii) ~~((Immediately))~~ Within seven working days deliver the property to the secretary ~~((as soon as the twenty-day answer period expires))~~;

(iii) Continue to withhold earnings payable to the debtor at each succeeding disbursement interval as provided for in RCW 74.20A.090, and deliver amounts withheld from earnings to the secretary ~~((or))~~ within seven working days of the date earnings are payable to the debtor;

(iv) Deliver amounts withheld from periodic payments to the secretary ~~((or))~~ within seven working days of the date the payments are payable to the debtor;

(v) Inform the secretary of the date the amounts were withheld as requested under this section; or

(b) Furnish to the secretary a good and sufficient bond, satisfactory to the secretary, conditioned upon final determination of liability.

~~((6))~~ (7) An order to withhold and deliver served under this section shall not expire until:

(a) Released in writing by the division of child support;

(b) Terminated by court order; or

(c) The person or entity receiving the order to withhold and deliver does not possess property of or owe money to the debtor ~~((for any period of twelve consecutive months following the date of service of the order to withhold and deliver))~~.

~~((7))~~ (8) Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, or association, political subdivision, or department of the state, or agency, subdivision, or instrumentality of the United States subject to withdrawal by the debtor, such money shall be delivered by remittance payable to the order of the secretary.

~~((8))~~ (9) Delivery to the secretary of the money or other property held or claimed shall satisfy the requirement and serve as full acquittance of the order to withhold and deliver.

~~((9))~~ (10) A person, firm, corporation, or association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States that complies with the order to withhold and deliver under this chapter is not civilly liable to the debtor for complying with the order to withhold and deliver under this chapter.

~~((10))~~ (11) The secretary may hold the money or property delivered under this section in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability.

~~((11))~~ (12) Exemptions contained in RCW 74.20A.090 apply to orders to withhold and deliver issued under this section.

~~((12))~~ (13) The secretary shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed a copy of the order to withhold and deliver to the debtor at the debtor's last known post office address, or, in the alternative, a copy of the order to withhold and deliver shall be served on the debtor in the same manner as a summons in a civil action on or before the date of service of the order or within two days thereafter. The copy of the order shall be mailed or served together with a concise explanation of the right to petition for judicial review. This requirement is not jurisdictional, but, if the copy is not mailed or served as in this section provided, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion on motion of the debtor promptly made and supported by affidavit showing that the debtor has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver and award to the debtor an amount equal to the damages resulting from the secretary's failure to serve on or mail to the debtor the copy.

~~((13))~~ (14) An order to withhold and deliver issued in accordance with this section has priority over any other wage assignment, garnishment, attachment, or other legal process.



~~((14))~~ (15) The division of child support shall notify any person, firm, corporation, association, or political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States required to withhold and deliver the earnings of a debtor under this action that they may deduct a processing fee from the remainder of the debtor's earnings, even if the remainder would otherwise be exempt under RCW 74.20A.090. The processing fee shall not exceed ten dollars for the first disbursement to the department and one dollar for each subsequent disbursement under the order to withhold and deliver.

**Sec. 2.** RCW 26.23.050 and 1997 c 58 s 888 are each amended to read as follows:

(1) If the division of child support is providing support enforcement services under RCW 26.23.045, or if a party is applying for support enforcement services by signing the application form on the bottom of the support order, the superior court shall include in all court orders that establish or modify a support obligation:

(a) A provision that orders and directs the responsible parent to make all support payments to the Washington state support registry;

(b) A statement that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the responsible parent at any time after entry of the court order, unless:

(i) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding and that withholding should be delayed until a payment is past due; or

(ii) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement;

(c) A statement that the receiving parent might be required to submit an accounting of how the support is being spent to benefit the child; and

(d) A statement that the responsible parent's privileges to obtain and maintain a license, as defined in RCW 74.20A.320, may not be renewed, or may be suspended if the parent is not in compliance with a support order as provided in RCW 74.20A.320.

As used in this subsection and subsection (3) of this section, "good cause not to require immediate income withholding" means a written determination of why implementing immediate wage withholding would not be in the child's best interests and, in modification cases, proof of timely payment of previously ordered support.

(2) In all other cases not under subsection (1) of this section, the court may order the responsible parent to make payments directly to the person entitled to receive the payments, to the Washington state support registry, or may order that payments be made in accordance with an alternate arrangement agreed upon by the parties.

(a) The superior court shall include in all orders under this subsection that establish or modify a support obligation:

(i) A statement that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the responsible parent at any time after entry of the court order, unless:

(A) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding and that withholding should be delayed until a payment is past due; or

(B) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement; and

(ii) A statement that the receiving parent may be required to submit an accounting of how the support is being spent to benefit the child.

As used in this subsection, "good cause not to require immediate income withholding" is any reason that the court finds appropriate.

(b) The superior court may order immediate or delayed income withholding as follows:

(i) Immediate income withholding may be ordered if the responsible parent has earnings. If immediate income withholding is ordered under this subsection, all support payments shall be paid to the Washington state support registry. The superior court shall issue a mandatory wage assignment order as set forth in chapter 26.18 RCW when the support order is signed by the court. The parent entitled to receive the transfer payment is responsible for serving the employer with the order and for its enforcement as set forth in chapter 26.18 RCW.

(ii) If immediate income withholding is not ordered, the court shall require that income withholding be delayed until a payment is past due. The support order shall contain a statement that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the responsible parent, after a payment is past due.

(c) If a mandatory wage withholding order under chapter 26.18 RCW is issued under this subsection and the division of child support provides support enforcement services under RCW 26.23.045, the existing wage withholding assignment is prospectively superseded upon the division of child support's subsequent service of an income withholding notice.

(3) The office of administrative hearings and the department of social and health services shall require that all support obligations established as administrative orders include a provision which orders and directs that the responsible parent shall make all support payments to the Washington state support registry. All administrative orders shall also state that the responsible parent's privileges to obtain and maintain a license, as defined in RCW 74.20A.320, may not be renewed, or may be suspended if the parent is not in compliance with a support order as provided in RCW 74.20A.320. All administrative orders shall also state that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal

property under the child support statutes of this or any other state without further notice to the responsible parent at any time after entry of the order, unless:

(a) One of the parties demonstrates, and the presiding officer finds, that there is good cause not to require immediate income withholding; or

(b) The parties reach a written agreement that is approved by the presiding officer that provides for an alternate agreement.

(4) If the support order does not include the provision ordering and directing that all payments be made to the Washington state support registry and a statement that withholding action may be taken against wages, earnings, assets, or benefits if a support payment is past due or at any time after the entry of the order, or that a parent's licensing privileges may not be renewed, or may be suspended, the division of child support may serve a notice on the responsible parent stating such requirements and authorizations. Service may be by personal service or any form of mail requiring a return receipt.

(5) Every support order shall state:

(a) The address where the support payment is to be sent;

(h) That withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the responsible parent at any time after entry of a support order, unless:

(i) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding; or

(ii) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement;

(c) The income of the parties, if known, or that their income is unknown and the income upon which the support award is based;

(d) The support award as a sum certain amount;

(e) The specific day or date on which the support payment is due;

(f) The social security number, residence address, date of birth, telephone number, driver's license number, and name and address of the employer of the responsible parent, except as provided under subsection (6) of this section;

(g) The social security number and residence address of the physical custodian except as provided in subsection (6) or (7) of this section;

(h) The names, dates of birth, and social security numbers, if any, of the dependent children;

(i) A provision requiring the responsible parent to keep the Washington state support registry informed of whether he or she has access to health insurance coverage at reasonable cost and, if so, the health insurance policy information;

(j) That any parent owing a duty of child support shall be obligated to provide health insurance coverage for his or her child if coverage that can be extended to cover the child is or becomes available to that parent through employment or is union-related as provided under RCW 26.09.105;

(k) That if proof of health insurance coverage or proof that the coverage is unavailable is not provided within twenty days, the obligee or the department may

seek direct enforcement of the coverage through the obligor's employer or union without further notice to the obligor as provided under chapter 26.18 RCW;

(l) The reasons for not ordering health insurance coverage if the order fails to require such coverage; ~~((and))~~

(m) That the responsible parent's privileges to obtain and maintain a license, as defined in RCW 74.20A.320, may not be renewed, or may be suspended if the parent is not in compliance with a support order as provided in RCW 74.20A.320; and

(n) That each parent must:

(i) Provide the state case registry with the information required by RCW 26.23.055; and

(ii) Update the information provided to the state case registry when the information changes.

(6) The address and employer's name and address of either party may be omitted from a support order if:

(a) There is reason to believe that release of the address information may result in physical or emotional harm to the party or to the child; or

(b) A restraining or protective order is in effect to protect one party from the other party.

~~(7) The physical custodian's address(~~((a))~~) shall be omitted from an order entered under the administrative procedure act.~~

(8) When ~~((the physical custodian's))~~ a party's employment or address is omitted from an order, the order shall state that the ~~((custodian's address))~~ information is known to the division of child support, state case registry.

~~((b) A responsible parent may request the physical custodian's residence address by submission of a request for disclosure under RCW 26.23.120 to the division of child support.~~

~~(7))~~ (9) After the responsible parent has been ordered or notified to make payments to the Washington state support registry under this section, the responsible parent shall be fully responsible for making all payments to the Washington state support registry and shall be subject to payroll deduction or other income-withholding action. The responsible parent shall not be entitled to credit against a support obligation for any payments made to a person or agency other than to the Washington state support registry except as provided under RCW 74.20.101. A civil action may be brought by the payor to recover payments made to persons or agencies who have received and retained support moneys paid contrary to the provisions of this section.

**Sec. 3.** RCW 26.23.055 and 1997 c 58 s 904 are each amended to read as follows:

(1) Each party to a paternity or child support proceeding must provide the court and the Washington state child support registry with his or her:

(a) Social security number;

(b) Current residential address;

(c) Date of birth;

- (d) Telephone number;
- (e) Driver's license number; and
- (f) Employer's name, address, and telephone number.

(2) Each party to an order entered in a child support or paternity proceeding shall update the information required under subsection (1) of this section promptly after any change in the information. The duty established under this section continues as long as any monthly support or support debt remains due under the support order.

(3) In any proceeding to establish, enforce, or modify the child support order between the parties, a party may demonstrate to the presiding officer that he or she has diligently attempted to locate the other party. Upon a showing of diligent efforts to locate, the presiding officer (~~may allow, or accept as adequate,~~) shall deem service of process for the action by delivery of written notice to the address most recently provided by the party under this section to be adequate notice of the action.

(4) All support orders shall contain notice to the parties of the obligations established by this section and possibility of service of process according to subsection (3) of this section.

**Sec. 4.** RCW 26.23.120 and 1997 c 58 s 908 are each amended to read as follows:

(1) Any information or records concerning individuals who owe a support obligation or for whom support enforcement services are being provided which are obtained or maintained by the Washington state support registry, the division of child support, or under chapter 74.20 RCW shall be private and confidential and shall only be subject to public disclosure as provided in subsection (2) of this section.

(2) The secretary of the department of social and health services may adopt rules:

- (a) That specify what information is confidential;
- (b) That specify the individuals or agencies to whom this information and these records may be disclosed;
- (c) Limiting the purposes for which the information may be disclosed;
- (d) Establishing procedures to obtain the information or records; or
- (e) Establishing safeguards necessary to comply with federal law requiring safeguarding of information.

(3) The rules adopted under subsection (2) of this section shall provide for disclosure of the information and records, under appropriate circumstances, which shall include, but not be limited to:

- (a) When authorized or required by federal statute or regulation governing the support enforcement program;
- (b) To the person the subject of the records or information, unless the information is exempt from disclosure under RCW 42.17.310;
- (c) To government agencies, whether state, local, or federal, and including federally recognized tribes, law enforcement agencies, prosecuting agencies, and

the executive branch, if the disclosure is necessary for child support enforcement purposes or required under Title IV-D of the federal social security act;

(d) To the parties in a judicial or adjudicative proceeding upon a specific written finding by the presiding officer that the need for the information outweighs any reason for maintaining the privacy and confidentiality of the information or records;

(e) To private persons, federally recognized tribes, or organizations if the disclosure is necessary to permit private contracting parties to assist in the management and operation of the department;

(f) Disclosure of address and employment information to the parties to an action for purposes relating to a child support order, subject to the limitations in subsections (4) and (5) of this section;

(g) Disclosure of information or records when necessary to the efficient administration of the support enforcement program or to the performance of functions and responsibilities of the support registry and the division of child support as set forth in state and federal statutes; or

(h) Disclosure of the information or records when authorized under RCW 74.04.060.

(4) Prior to disclosing the whereabouts of a physical custodian, custodial parent or a ~~((party to a support order))~~ child to the other parent or party, a notice shall be mailed, if appropriate under the circumstances, to the parent or ~~((other party))~~ physical custodian whose whereabouts are to be disclosed, at that person's last known address. The notice shall advise the parent or ~~((party))~~ physical custodian that a request for disclosure has been made and will be complied with unless the department:

(a) Receives a copy of a court order within thirty days which enjoins the disclosure of the information or restricts or limits the requesting party's right to contact or visit the parent or party whose address is to be disclosed or the child;

(b) Receives a hearing request within thirty days under subsection (5) of this section; or

(c) Has reason to believe that the release of the information may result in physical or emotional harm to the ~~((party))~~ physical custodian whose whereabouts are to be released, or to the child.

(5) A person receiving notice under subsection (4) of this section may request an adjudicative proceeding under chapter 34.05 RCW, at which the person may show that there is reason to believe that release of the information may result in physical or emotional harm to the person or the child. The administrative law judge shall determine whether the whereabouts of the person or child should be disclosed based on subsection (4)(c) of this section, however no hearing is necessary if the department has in its possession a protective order or an order limiting visitation or contact.

(6) The notice and hearing process in subsections (4) and (5) of this section do not apply to protect the whereabouts of a noncustodial parent, unless that parent has requested notice before whereabouts information is released. A

noncustodial parent may request such notice by submitting a written request to the division of child support.

(7) Nothing in this section shall be construed as limiting or restricting the effect of RCW 42.17.260(9). Nothing in this section shall be construed to prevent the disclosure of information and records if all details identifying an individual are deleted or the individual consents to the disclosure.

~~((7))~~ (8) It shall be unlawful for any person or agency in violation of this section to solicit, publish, disclose, receive, make use of, or to authorize, knowingly permit, participate in or acquiesce in the use of any lists of names for commercial or political purposes or the use of any information for purposes other than those purposes specified in this section. A violation of this section shall be a gross misdemeanor as provided in chapter 9A.20 RCW.

Sec. 5. RCW 26.23.040 and 1997 c 58 s 944 are each amended to read as follows:

(1) All employers doing business in the state of Washington ~~((, and to whom the department of employment security has assigned a standard industrial classification sic code))~~ shall report to the Washington state support registry:

(a) The hiring of any person who resides or works in this state to whom the employer anticipates paying earnings; and

(b) The rehiring or return to work of any employee who was laid off, furloughed, separated, granted a leave without pay, or terminated from employment.

The secretary of the department of social and health services may adopt rules to establish additional exemptions if needed to reduce unnecessary or burdensome reporting.

(2) Employers may report by mailing the employee's copy of the W-4 form, or other means authorized by the registry which will result in timely reporting.

(3) Employers shall submit reports within twenty days of the hiring, rehiring, or return to work of the employee, except as provided in subsection (4) of this section. The report shall contain:

(a) The employee's name, address, social security number, and date of birth; and

(b) The employer's name, address, ~~((employment security reference number, unified business identifier number))~~ and identifying number assigned under section 6109 of the internal revenue code of 1986.

(4) In the case of an employer transmitting reports magnetically or electronically, the employer shall report newly hired employees by two monthly transmissions, if necessary, not less than twelve days nor more than sixteen days apart.

(5) An employer who fails to report as required under this section ~~((shall be given a written warning for the first violation and))~~ shall be subject to a civil penalty of ~~((up to two hundred dollars per month for each subsequent violation after the warning has been given))~~;

(a) Twenty-five dollars per month per employee; or

(b) Five hundred dollars, if the failure to report is the result of a conspiracy between the employer and the employee not to supply the required report, or to supply a false report. All violations within a single month shall be considered a single violation for purposes of assessing the penalty. The penalty may be imposed and collected by the division of child support under RCW 74.20A.350.

(6) The registry shall retain the information for a particular employee only if the registry is responsible for establishing, enforcing, or collecting a support debt of the employee. The registry may, however, retain information for a particular employee for as long as may be necessary to:

(a) Transmit the information to the national directory of new hires as required under federal law; or

(b) Provide the information to other state agencies for comparison with records or information possessed by those agencies as required by law.

Information that is not permitted to be retained shall be promptly destroyed. Agencies that obtain information from the department of social and health services under this section shall maintain the confidentiality of the information received, except as necessary to implement the agencies' responsibilities.

NEW SECTION. Sec. 6. A new section is added to chapter 26.23 RCW to read as follows:

The federal personal responsibility and work opportunity reconciliation act of 1996, P.L. 104-193, requires states to collect social security numbers as part of the application process for professional licenses, driver's licenses, occupational licenses, and recreational licenses. The legislature finds that if social security numbers are accessible to the public, it will be relatively easy for someone to use another's social security number fraudulently to assume that person's identity and gain access to bank accounts, credit services, billing information, driving history, and other sources of personal information. Public Law 104-193 could compound and exacerbate the disturbing trend of social security number-related fraud. In order to prevent fraud and curtail invasions of privacy, the governor, through the department of social and health services, shall seek a waiver to the federal mandate to record social security numbers on applications for professional, driver's, occupational, and recreational licenses. If a waiver is not granted, the licensing agencies shall collect and disclose social security numbers as required under section 7 of this act.

NEW SECTION. Sec. 7. A new section is added to chapter 26.23 RCW to read as follows:

In order to assist in child support enforcement as required by federal law, all applicants for an original, replacement, or renewal of a professional license, driver's license, occupational license, or recreational license must furnish the licensing agency with the applicant's social security number, which shall be recorded on the application. The licensing agencies collecting social security numbers shall not display the social security number on the license document.



Social security numbers collected by licensing agencies shall not be disclosed except as required by state or federal law or under RCW 26.23.120.

**Sec. 8.** RCW 26.23.060 and 1997 c 58 s 890 are each amended to read as follows:

(1) The division of child support may issue a notice of payroll deduction:

(a) As authorized by a support order that contains a notice clearly stating that child support may be collected by withholding from earnings, wages, or benefits without further notice to the obligated parent; or

(b) After service of a notice containing an income-withholding provision under this chapter or chapter 74.20A RCW.

(2) The division of child support shall serve a notice of payroll deduction upon a responsible parent's employer or upon the employment security department for the state in possession of or owing any benefits from the unemployment compensation fund to the responsible parent pursuant to Title 50 RCW:

(a) In the manner prescribed for the service of a summons in a civil action;

(b) By certified mail, return receipt requested; ~~((or))~~

(c) By electronic means if there is an agreement between the secretary and the person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States to accept service by electronic means; or

(d) By regular mail to a responsible parent's employer unless the division of child support reasonably believes that service of process in the manner prescribed in (a) or (b) of this subsection is required for initiating an action to ensure employer compliance with the withholding requirement.

(3) Service of a notice of payroll deduction upon an employer or employment security department requires the employer or employment security department to immediately make a mandatory payroll deduction from the responsible parent's unpaid disposable earnings or unemployment compensation benefits. The employer or employment security department shall thereafter deduct each pay period the amount stated in the notice divided by the number of pay periods per month. The payroll deduction each pay period shall not exceed fifty percent of the responsible parent's disposable earnings.

(4) A notice of payroll deduction for support shall have priority over any wage assignment, garnishment, attachment, or other legal process.

(5) The notice of payroll deduction shall be in writing and include:

(a) The name and social security number of the responsible parent;

(b) The amount to be deducted from the responsible parent's disposable earnings each month, or alternate amounts and frequencies as may be necessary to facilitate processing of the payroll deduction;

(c) A statement that the total amount withheld shall not exceed fifty percent of the responsible parent's disposable earnings;

(d) The address to which the payments are to be mailed or delivered; and

(e) A notice to the responsible parent warning the responsible parent that, despite the payroll deduction, the responsible parent's privileges to obtain and maintain a license, as defined in RCW 74.20A.320, may not be renewed, or may be suspended if the parent is not in compliance with a support order as defined in RCW 74.20A.320.

(6) An informational copy of the notice of payroll deduction shall be mailed to the last known address of the responsible parent by regular mail.

(7) An employer or employment security department that receives a notice of payroll deduction shall make immediate deductions from the responsible parent's unpaid disposable earnings and remit proper amounts to the Washington state support registry (~~on each date the responsible parent is due to be paid~~) within seven working days of the date the earnings are payable to the responsible parent.

(8) An employer, or the employment security department, upon whom a notice of payroll deduction is served, shall make an answer to the division of child support within twenty days after the date of service. The answer shall confirm compliance and institution of the payroll deduction or explain the circumstances if no payroll deduction is in effect. The answer shall also state whether the responsible parent is employed by or receives earnings from the employer or receives unemployment compensation benefits from the employment security department, whether the employer or employment security department anticipates paying earnings or unemployment compensation benefits and the amount of earnings. If the responsible parent is no longer employed, or receiving earnings from the employer, the answer shall state the present employer's name and address, if known. If the responsible parent is no longer receiving unemployment compensation benefits from the employment security department, the answer shall state the present employer's name and address, if known.

The returned answer or a payment remitted to the division of child support by the employer constitutes proof of service of the notice of payroll deduction in the case where the notice was served by regular mail.

(9) The employer or employment security department may deduct a processing fee from the remainder of the responsible parent's earnings after withholding under the notice of payroll deduction, even if the remainder is exempt under RCW 26.18.090. The processing fee may not exceed: (a) Ten dollars for the first disbursement made to the Washington state support registry; and (b) one dollar for each subsequent disbursement to the registry.

(10) The notice of payroll deduction shall remain in effect until released by the division of child support, the court enters an order terminating the notice and approving an alternate arrangement under RCW 26.23.050, or (~~one year has expired since the employer has employed the responsible parent or has been in possession of or owing any earnings to the responsible parent or the employment security department has been in possession of or owing any unemployment compensation benefits to the responsible parent~~) until the employer no longer employs the responsible parent and is no longer in possession of or owing any

earnings to the responsible parent. The employer shall promptly notify the office of support enforcement when the employer no longer employs the parent subject to the notice. For the employment security department, the notice of payroll deduction shall remain in effect until released by the division of child support or until the court enters an order terminating the notice.

(11) The division of child support may use uniform interstate withholding forms adopted by the United States department of health and human services to take withholding actions under this section when the responsible parent is receiving earnings or unemployment compensation in another state.

**NEW SECTION.** Sec. 9. Sections 1, 5, and 8 of this act take effect October 1, 1998.

Passed the Senate March 10, 1998.

Passed the House March 6, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

## CHAPTER 161

[Substitute Senate Bill 6420]

### UNEMPLOYMENT INSURANCE BENEFITS APPLICATIONS FOR INITIAL DETERMINATIONS—REVISIONS

AN ACT Relating to application for initial determination for unemployment insurance benefits; amending RCW 50.20.140 and 50.24.014; adding new sections to chapter 50.20 RCW; and creating new sections.

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

**NEW SECTION.** Sec. 1. The legislature finds that the shift by the employment security department from in-person written initial applications for unemployment insurance benefits to a call center approach creates opportunities for improved service but also raises serious concerns. Eliminating face-to-face contact may increase the potential for fraud and reduce the probability that claimants will utilize existing reemployment resources. Therefore, it is the intent of the legislature that if the written application process is to be eliminated, the employment security department must ensure that unemployment insurance claimants remain actively involved in reemployment activities and that an independent evaluation be conducted of the call center approach to unemployment insurance.

Sec. 2. RCW 50.20.140 and 195I c 215 s 4 are each amended to read as follows:

An application for initial determination, a claim for waiting period, or a claim for benefits shall be filed in accordance with such ~~((regulations))~~ rules as the commissioner may prescribe. An application for an initial determination may be made by any individual whether unemployed or not. Each employer shall post and maintain printed statements of such ~~((regulations))~~ rules in places readily accessible to individuals in his or her employment and shall make available to

each such individual at the time he or she becomes unemployed, a printed statement of such ~~((regulations))~~ rules and such notices, instructions, and other material as the commissioner may by ~~((regulation))~~ rule prescribe. Such printed material shall be supplied by the commissioner to each employer without cost to ~~((him))~~ the employer.

The term "application for initial determination" shall mean a request in writing, or by other means as determined by the commissioner, for an initial determination. The term "claim for waiting period" shall mean a certification, after the close of a given week, that the requirements stated herein for eligibility for waiting period have been met. The term "claim for benefits" shall mean a certification, after the close of a given week, that the requirements stated herein for eligibility for receipt of benefits have been met.

A representative designated by the commissioner shall take the application for initial determination and for the claim for waiting period credits or for benefits. When an application for initial determination has been made, the employment security department shall promptly make an initial determination which shall be a statement of the applicant's base year wages, his or her weekly benefit amount, his or her maximum amount of benefits potentially payable, and his or her benefit year. Such determination shall fix the general conditions under which waiting period credit shall be granted and under which benefits shall be paid during any period of unemployment occurring within the benefit year fixed by such determination.

NEW SECTION. Sec. 3. A new section is added to chapter 50.20 RCW to read as follows:

The employment security department will ensure that within a reasonably short period of time after the initiation of benefits, all unemployment insurance claimants, except those with employer attachment, union referral, in commissioner approved training, or the subject of antiharassment orders, register for job search in an electronic labor exchange system that supports direct employer access for the purpose of selecting job applicants.

NEW SECTION. Sec. 4. A new section is added to chapter 50.20 RCW to read as follows:

To ensure that following the initial application for benefits, an individual is actively engaged in searching for work, effective July 1, 1999, the employment security department shall implement a job search monitoring program. Except for those individuals with employer attachment or union referral, and individuals in commissioner-approved training, an individual who has received five or more weeks of benefits under this title must provide evidence of seeking work, as directed by the commissioner or commissioner's agents, for each week beyond five in which a claim is filed. The evidence must demonstrate contacts with at least three employers per week or documented in-person job search activity at the local reemployment center. In developing the requirements for the job search monitoring program, the commissioner or the commissioner's agents shall utilize

an existing advisory committee having equal representation of employers and workers.

**NEW SECTION. Sec. 5.** (1) The joint legislative audit and review committee, in consultation with members of the senate and house of representatives commerce and labor committees and the unemployment insurance advisory committee, shall conduct an evaluation of the new call center approach to unemployment insurance. The evaluation shall review the performance of the call center system, including, but not limited to, the: (a) Promptness of payments; (h) number and types of errors; (c) amount and types of fraud; and (d) level of overpayments and underpayments, compared with the current system.

(2) The joint legislative audit and review committee is directed to contract with a private entity consistent with the provisions of chapter 39.29 RCW. The committee shall consult with the unemployment insurance advisory committee in the design of the request for proposals from potential contractors and shall use the advisory committee to evaluate the responses. The joint legislative audit and review committee shall provide a report on its findings and recommendations to the appropriate standing committee of the senate and house of representatives by September 1, 2001.

**NEW SECTION. Sec. 6.** The employment security department is authorized to expend funds provided under RCW 50.24.014(1)(b) for the purposes of the evaluation provided for in section 5 of this act.

**Sec. 7.** RCW 50.24.014 and 1994 c 187 s 3 are each amended to read as follows:

(1)(a) A separate and identifiable account to provide for the financing of special programs to assist the unemployed is established in the administrative contingency fund. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, at a basic rate of two one-hundredths of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010.

(b) For the first calendar quarter of 1994 only, the basic two one-hundredths of one percent contribution payable under (a) of this subsection shall be increased by one-hundredth of one percent to a total rate of three one-hundredths of one percent. The proceeds of this incremental one-hundredth of one percent shall be used solely for the purposes described in section 22, chapter 483, Laws of 1993, and for the purposes ~~((described in RCW 50.40.060))~~ of conducting an evaluation of the call center approach to unemployment insurance under section 5 of this act. Any surplus from contributions payable under this subsection (b) will be deposited in the unemployment compensation trust fund.

(2)(a) Contributions under this section shall become due and be paid by each employer under rules as the commissioner may prescribe, and shall not be

deducted, in whole or in part, from the remuneration of individuals in the employ of the employer. Any deduction in violation of this section is unlawful.

(b) In the payment of any contributions under this section, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(3) If the commissioner determines that federal funding has been increased to provide financing for the services specified in chapter 50.62 RCW, the commissioner shall direct that collection of contributions under this section be terminated on the following January 1st.

Passed the Senate March 9, 1998.

Passed the House March 6, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

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## CHAPTER 162

[Engrossed Substitute Senate Bill 6421]

### UNEMPLOYMENT COMPENSATION FOR PERSONS WITH PUBLIC EMPLOYMENT CONTRACTS—REVISIONS

AN ACT Relating to unemployment compensation for persons with public employment contracts; amending RCW 50.04.320; creating a new section; providing an effective date; and declaring an emergency.

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

**Sec. I.** RCW 50.04.320 and 1995 c 296 s I are each amended to read as follows:

(1) For the purpose of payment of contributions, "wages" means the remuneration paid by one employer during any calendar year to an individual in its employment under this title or the unemployment compensation law of any other state in the amount specified in RCW 50.24.010. If an employer (hereinafter referred to as a successor employer) during any calendar year acquires substantially all the operating assets of another employer (hereinafter referred to as a predecessor employer) or assets used in a separate unit of a trade or business of a predecessor employer, and immediately after the acquisition employs in the individual's trade or business an individual who immediately before the acquisition was employed in the trade or business of the predecessor employer, then, for the purposes of determining the amount of remuneration paid by the successor employer to the individual during the calendar year which is subject to contributions, any remuneration paid to the individual by the predecessor employer during that calendar year and before the acquisition shall be considered as having been paid by the successor employer.

(2) For the purpose of payment of benefits, "wages" means the remuneration paid by one or more employers to an individual for employment under this title during his base year: PROVIDED, That at the request of a claimant, wages may be calculated on the basis of remuneration payable. The department shall notify

each claimant that wages are calculated on the basis of remuneration paid, but at the claimant's request a redetermination may be performed and based on remuneration payable.

(3) For the purpose of payment of benefits and payment of contributions, the term "wages" includes tips which are received after January 1, 1987, while performing services which constitute employment, and which are reported to the employer for federal income tax purposes.

(4)(a) "Remuneration" means all compensation paid for personal services including commissions and bonuses and the cash value of all compensation paid in any medium other than cash. The reasonable cash value of compensation paid in any medium other than cash and the reasonable value of gratuities shall be estimated and determined in accordance with rules prescribed by the commissioner. Remuneration does not include payments to members of a reserve component of the armed forces of the United States, including the organized militia of the state of Washington, for the performance of duty for periods not exceeding seventy-two hours at a time.

(b) Previously accrued compensation, other than severance pay or payments received pursuant to plant closure agreements, when assigned to a specific period of time by virtue of a collective bargaining agreement, individual employment contract, customary trade practice, or request of the individual compensated, shall be considered remuneration for the period to which it is assigned. Assignment clearly occurs when the compensation serves to make the individual eligible for all regular fringe benefits for the period to which the compensation is assigned.

(c) Settlements or other proceeds received by an individual as a result of a negotiated settlement for termination of an individual written employment contract (~~((with a public agency))~~) prior to its expiration date shall be considered remuneration. The proceeds shall be deemed assigned in the same intervals and in the same amount for each interval as compensation was allocated under the contract.

(d) Except as provided in (c) of this subsection, the provisions of this subsection (4) pertaining to the assignment of previously accrued compensation shall not apply to individuals subject to RCW 50.44.050.

**NEW SECTION. Sec. 2.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

**NEW SECTION. Sec. 3.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state

government and its existing public institutions, and takes effect on the Sunday following the day that the governor signs this act and is effective for initial claims filed on or after that Sunday.

Passed the Senate March 9, 1998.

Passed the House March 3, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

## CHAPTER 163

[Senate Bill 6581]

### STANDARDS FOR DETERMINING CHILD SUPPORT OBLIGATIONS FOR PERSONS WITH INCOMES OF LESS THAN SIX HUNDRED DOLLARS—REVISIONS

AN ACT Relating to standards for determining child support obligations for parents with a combined monthly net income of less than six hundred dollars; and amending RCW 26.19.065 and 26.19.020.

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

**Sec. 1.** RCW 26.19.065 and 1991 c 367 s 33 are each amended to read as follows:

(1) **Limit at forty-five percent of a parent's net income.** Neither parent's total child support obligation may exceed forty-five percent of net income except for good cause shown. Good cause includes but is not limited to possession of substantial wealth, children with day care expenses, special medical need, educational need, psychological need, and larger families.

(2) **Income below six hundred dollars.** When combined monthly net income is less than six hundred dollars, a support order of not less than twenty-five dollars per child per month shall be entered for each parent unless the obligor parent establishes that it would be unjust or inappropriate to do so in that particular case. The decision whether there is a sufficient basis to deviate below the presumptive minimum payment must take into consideration the best interests of the child and the circumstances of each parent. Such circumstances can include comparative hardship to the affected households, assets or liabilities, and earning capacity. A parent's support obligation shall not reduce his or her net income below the need standard for one person established pursuant to RCW 74.04.770, except for the (~~mandatory~~) presumptive minimum payment of twenty-five dollars per child per month (~~as required in this section~~) or in cases where the court finds reasons for deviation (~~under section 32 of this act~~). This section shall not be construed to require monthly substantiation of income.

(3) **Income above five thousand and seven thousand dollars.** The economic table is presumptive for combined monthly net incomes up to and including five thousand dollars. When combined monthly net income exceeds five thousand dollars, support shall not be set at an amount lower than the presumptive amount of support set for combined monthly net incomes of five thousand dollars unless the court finds a reason to deviate below that amount.



The economic table is advisory but not presumptive for combined monthly net incomes that exceed five thousand dollars. When combined monthly net income exceeds seven thousand dollars, the court may set support at an advisory amount of support set for combined monthly net incomes between five thousand and seven thousand dollars or the court may exceed the advisory amount of support set for combined monthly net incomes of seven thousand dollars upon written findings of fact.

Sec. 2. RCW 26.19.020 and 1991 c 367 s 25 are each amended to read as follows:

**ECONOMIC TABLE  
MONTHLY BASIC SUPPORT OBLIGATION  
PER CHILD**

KEY: A = AGE 0-11 B = AGE 12-18

| COMBINED<br>MONTHLY<br>NET<br>INCOME | ONE<br>CHILD<br>FAMILY                                   |     | TWO<br>CHILDREN<br>FAMILY |     |
|--------------------------------------|--|-----|---------------------------|-----|
|                                      | A  | B   | A                         | B   |
| 0                                    |  |     |                           |     |
| 100                                  |  |     |                           |     |
| 200                                  |  |     |                           |     |
| 300                                  | For income less than \$600 the obligation                |     |                           |     |
| 400                                  | is based upon the resources and living expenses          |     |                           |     |
| 500                                  | of each household. Minimum support shall not             |     |                           |     |
|                                      | be less than \$25 per child per month <u>except when</u> |     |                           |     |
|                                      | <u>allowed by RCW 26.19.065(2).</u>                      |     |                           |     |
| 600                                  | 133  | 164 | 103                       | 127 |
| 700                                  | 155  | 191 | 120                       | 148 |
| 800                                  | 177  | 218 | 137                       | 170 |
| 900                                  | 199  | 246 | 154                       | 191 |
| 1000                                 | 220  | 272 | 171                       | 211 |
| 1100                                 | 242  | 299 | 188                       | 232 |
| 1200                                 | 264  | 326 | 205                       | 253 |
| 1300                                 | 285  | 352 | 221                       | 274 |
| 1400                                 | 307  | 379 | 238                       | 294 |
| 1500                                 | 327  | 404 | 254                       | 313 |
| 1600                                 | 347  | 428 | 269                       | 333 |
| 1700                                 | 367  | 453 | 285                       | 352 |
| 1800                                 | 387  | 478 | 300                       | 371 |
| 1900                                 | 407  | 503 | 316                       | 390 |
| 2000                                 | 427  | 527 | 331                       | 409 |

|      |     |      |     |     |
|------|-----|------|-----|-----|
| 2100 | 447 | 552  | 347 | 429 |
| 2200 | 467 | 577  | 362 | 448 |
| 2300 | 487 | 601  | 378 | 467 |
| 2400 | 506 | 626  | 393 | 486 |
| 2500 | 526 | 650  | 408 | 505 |
| 2600 | 534 | 661  | 416 | 513 |
| 2700 | 542 | 670  | 421 | 520 |
| 2800 | 549 | 679  | 427 | 527 |
| 2900 | 556 | 686  | 431 | 533 |
| 3000 | 561 | 693  | 436 | 538 |
| 3100 | 566 | 699  | 439 | 543 |
| 3200 | 569 | 704  | 442 | 546 |
| 3300 | 573 | 708  | 445 | 549 |
| 3400 | 574 | 710  | 446 | 551 |
| 3500 | 575 | 711  | 447 | 552 |
| 3600 | 577 | 712  | 448 | 553 |
| 3700 | 578 | 713  | 449 | 554 |
| 3800 | 581 | 719  | 452 | 558 |
| 3900 | 596 | 736  | 463 | 572 |
| 4000 | 609 | 753  | 473 | 584 |
| 4100 | 623 | 770  | 484 | 598 |
| 4200 | 638 | 788  | 495 | 611 |
| 4300 | 651 | 805  | 506 | 625 |
| 4400 | 664 | 821  | 516 | 637 |
| 4500 | 677 | 836  | 525 | 649 |
| 4600 | 689 | 851  | 535 | 661 |
| 4700 | 701 | 866  | 545 | 673 |
| 4800 | 713 | 882  | 554 | 685 |
| 4900 | 726 | 897  | 564 | 697 |
| 5000 | 738 | 912  | 574 | 708 |
| 5100 | 751 | 928  | 584 | 720 |
| 5200 | 763 | 943  | 593 | 732 |
| 5300 | 776 | 959  | 602 | 744 |
| 5400 | 788 | 974  | 612 | 756 |
| 5500 | 800 | 989  | 622 | 768 |
| 5600 | 812 | 1004 | 632 | 779 |
| 5700 | 825 | 1019 | 641 | 791 |
| 5800 | 837 | 1035 | 650 | 803 |
| 5900 | 850 | 1050 | 660 | 815 |
| 6000 | 862 | 1065 | 670 | 827 |
| 6100 | 875 | 1081 | 680 | 839 |
| 6200 | 887 | 1096 | 689 | 851 |
| 6300 | 899 | 1112 | 699 | 863 |
| 6400 | 911 | 1127 | 709 | 875 |

|      |     |      |     |     |
|------|-----|------|-----|-----|
| 6500 | 924 | 1142 | 718 | 887 |
| 6600 | 936 | 1157 | 728 | 899 |
| 6700 | 949 | 1172 | 737 | 911 |
| 6800 | 961 | 1188 | 747 | 923 |
| 6900 | 974 | 1203 | 757 | 935 |
| 7000 | 986 | 1218 | 767 | 946 |

| COMBINED<br>MONTHLY<br>NET<br>INCOME | THREE<br>CHILDREN<br>FAMILY                                      |     | FOUR<br>CHILDREN<br>FAMILY |     | FIVE<br>CHILDREN<br>FAMILY |     |
|--------------------------------------|--|-----|----------------------------|-----|----------------------------|-----|
|                                      | A  | B   | A                          | B   | A                          | B   |
| 0                                    |  |     |                            |     |                            |     |
| 100                                  |  |     |                            |     |                            |     |
| 200                                  |  |     |                            |     |                            |     |
| 300                                  | For income less than \$600 the obligation                        |     |                            |     |                            |     |
| 400                                  | is based upon the resources and living expenses                  |     |                            |     |                            |     |
| 500                                  | of each household. Minimum support shall not be                  |     |                            |     |                            |     |
|                                      | less than \$25 per child per month <u>except when allowed by</u> |     |                            |     |                            |     |
|                                      | <u>RCW 26.19.065(2).</u>   |     |                            |     |                            |     |
| 600                                  | 86   | 106 | 73                         | 90  | 63                         | 78  |
| 700                                  | 100  | 124 | 85                         | 105 | 74                         | 91  |
| 800                                  | 115  | 142 | 97                         | 120 | 84                         | 104 |
| 900                                  | 129  | 159 | 109                        | 135 | 95                         | 118 |
| 1000                                 | 143  | 177 | 121                        | 149 | 105                        | 130 |
| 1100                                 | 157  | 194 | 133                        | 164 | 116                        | 143 |
| 1200                                 | 171  | 211 | 144                        | 179 | 126                        | 156 |
| 1300                                 | 185  | 228 | 156                        | 193 | 136                        | 168 |
| 1400                                 | 199  | 246 | 168                        | 208 | 147                        | 181 |
| 1500                                 | 212  | 262 | 179                        | 221 | 156                        | 193 |
| 1600                                 | 225  | 278 | 190                        | 235 | 166                        | 205 |
| 1700                                 | 238  | 294 | 201                        | 248 | 175                        | 217 |
| 1800                                 | 251  | 310 | 212                        | 262 | 185                        | 228 |
| 1900                                 | 264  | 326 | 223                        | 275 | 194                        | 240 |
| 2000                                 | 277  | 342 | 234                        | 289 | 204                        | 252 |
| 2100                                 | 289  | 358 | 245                        | 303 | 213                        | 264 |
| 2200                                 | 302  | 374 | 256                        | 316 | 223                        | 276 |
| 2300                                 | 315  | 390 | 267                        | 330 | 233                        | 288 |
| 2400                                 | 328  | 406 | 278                        | 343 | 242                        | 299 |
| 2500                                 | 341  | 421 | 288                        | 356 | 251                        | 311 |
| 2600                                 | 346  | 428 | 293                        | 362 | 256                        | 316 |

|      |     |     |     |     |     |     |
|------|-----|-----|-----|-----|-----|-----|
| 2700 | 351 | 435 | 298 | 368 | 259 | 321 |
| 2800 | 356 | 440 | 301 | 372 | 262 | 324 |
| 2900 | 360 | 445 | 305 | 376 | 266 | 328 |
| 3000 | 364 | 449 | 308 | 380 | 268 | 331 |
| 3100 | 367 | 453 | 310 | 383 | 270 | 334 |
| 3200 | 369 | 457 | 312 | 386 | 272 | 336 |
| 3300 | 371 | 459 | 314 | 388 | 273 | 339 |
| 3400 | 372 | 460 | 315 | 389 | 274 | 340 |
| 3500 | 373 | 461 | 316 | 390 | 275 | 341 |
| 3600 | 374 | 462 | 317 | 391 | 276 | 342 |
| 3700 | 375 | 463 | 318 | 392 | 277 | 343 |
| 3800 | 377 | 466 | 319 | 394 | 278 | 344 |
| 3900 | 386 | 477 | 326 | 404 | 284 | 352 |
| 4000 | 395 | 488 | 334 | 413 | 291 | 360 |
| 4100 | 404 | 500 | 341 | 422 | 298 | 368 |
| 4200 | 413 | 511 | 350 | 431 | 305 | 377 |
| 4300 | 422 | 522 | 357 | 441 | 311 | 385 |
| 4400 | 431 | 532 | 364 | 449 | 317 | 392 |
| 4500 | 438 | 542 | 371 | 458 | 323 | 400 |
| 4600 | 446 | 552 | 377 | 467 | 329 | 407 |
| 4700 | 455 | 562 | 384 | 475 | 335 | 414 |
| 4800 | 463 | 572 | 391 | 483 | 341 | 422 |
| 4900 | 470 | 581 | 398 | 491 | 347 | 429 |
| 5000 | 479 | 592 | 404 | 500 | 353 | 437 |
| 5100 | 487 | 602 | 411 | 509 | 359 | 443 |
| 5200 | 494 | 611 | 418 | 517 | 365 | 451 |
| 5300 | 503 | 621 | 425 | 525 | 371 | 458 |
| 5400 | 511 | 632 | 432 | 533 | 377 | 466 |
| 5500 | 518 | 641 | 439 | 542 | 383 | 473 |
| 5600 | 527 | 651 | 446 | 551 | 389 | 480 |
| 5700 | 535 | 661 | 452 | 559 | 395 | 488 |
| 5800 | 543 | 671 | 459 | 567 | 401 | 495 |
| 5900 | 551 | 681 | 466 | 575 | 407 | 502 |
| 6000 | 559 | 691 | 473 | 584 | 413 | 509 |
| 6100 | 567 | 701 | 479 | 593 | 418 | 517 |
| 6200 | 575 | 710 | 486 | 601 | 424 | 524 |
| 6300 | 583 | 721 | 493 | 609 | 430 | 532 |
| 6400 | 591 | 731 | 500 | 617 | 436 | 539 |
| 6500 | 599 | 740 | 506 | 626 | 442 | 546 |
| 6600 | 607 | 750 | 513 | 635 | 448 | 554 |
| 6700 | 615 | 761 | 520 | 643 | 454 | 561 |
| 6800 | 623 | 770 | 527 | 651 | 460 | 568 |
| 6900 | 631 | 780 | 533 | 659 | 466 | 575 |
| 7000 | 639 | 790 | 540 | 668 | 472 | 583 |

The economic table is presumptive for combined monthly net incomes up to and including five thousand dollars. When combined monthly net income exceeds five thousand dollars, support shall not be set at an amount lower than the presumptive amount of support set for combined monthly net incomes of five thousand dollars unless the court finds a reason to deviate below that amount. The economic table is advisory but not presumptive for combined monthly net incomes that exceed five thousand dollars. When combined monthly net income exceeds seven thousand dollars, the court may set support at an advisory amount of support set for combined monthly net incomes between five thousand and seven thousand dollars or the court may exceed the advisory amount of support set for combined monthly net incomes of seven thousand dollars upon written findings of fact.

Passed the Senate February 14, 1998.

Passed the House March 5, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

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## CHAPTER 164

[Senate Bill 6698]

### WASHINGTON STATE SALARY COMMISSIONS—TIMELINES

AN ACT Relating to the Washington state salary commission; and amending RCW 43.03.310.

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

**Sec. 1.** RCW 43.03.310 and 1995 c 3 s 2 are each amended to read as follows:

(1) The citizens' commission on salaries for elected officials shall study the relationship of salaries to the duties of members of the legislature, all elected officials of the executive branch of state government, and all judges of the supreme court, court of appeals, superior courts, and district courts, and shall fix the salary for each respective position.

(2) Except as provided otherwise in RCW 43.03.305 and this section, the commission shall be solely responsible for its own organization, operation, and action and shall enjoy the fullest cooperation of all state officials, departments, and agencies.

(3) Members of the commission shall receive no compensation for their services, but shall be eligible to receive a subsistence allowance and travel expenses pursuant to RCW 43.03.050 and 43.03.060.

(4) The members of the commission shall elect a chair from among their number. The commission shall set a schedule of salaries by an affirmative vote of not less than nine members of the commission.

(5) The commission shall file its initial schedule of salaries for the elected officials with the secretary of state no later than the first Monday in June, 1987, and shall file a schedule biennially thereafter. Each such schedule shall be filed

in legislative bill form, shall be assigned a chapter number and published with the session laws of the legislature, and shall be codified by the statute law committee. The signature of the chair of the commission shall be affixed to each schedule submitted to the secretary of state. The chair shall certify that the schedule has been adopted in accordance with the provisions of state law and with the rules, if any, of the commission. Such schedules shall become effective ninety days after the filing thereof, except as provided in Article XXVIII, section 1 of the state Constitution. State laws regarding referendum petitions shall apply to such schedules to the extent consistent with Article XXVIII, section 1 of the state Constitution.

(6) ~~((Prior to))~~ Before the filing of any salary schedule, the commission shall first develop a proposed salary schedule and then hold no fewer than four ~~((public hearings thereon))~~ regular meetings as defined by chapter 42.30 RCW to take public testimony on the proposed schedule within the four months immediately preceding the filing. At the last public hearing that is held as a regular meeting on the proposed schedule, the commission shall adopt the salary schedule as originally proposed or as amended at that meeting that will be filed with the secretary of state.

(7) All meetings, actions, hearings, and business of the commission shall be subject in full to the open public meetings act, chapter 42.30 RCW.

(8) Salaries of the officials referred to in subsection (1) of this section that are in effect on January 12, 1987, shall continue until modified by the commission under this section.

Passed the Senate March 9, 1998.

Passed the House March 5, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.

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## CHAPTER 165

[Engrossed Substitute House Bill 2439]

### TRAFFIC SAFETY EDUCATION

AN ACT Relating to traffic safety education; amending RCW 43.59.010, 46.20.095, 46.82.430, 46.83.040, 46.52.070, 46.52.100, 46.52.120, 46.52.130, 46.20.291, 46.20.305, 46.37.280, and 46.61.780; adding a new section to chapter 43.59 RCW; adding a new section to chapter 46.20 RCW; creating new sections; prescribing penalties; making an appropriation; and providing an effective date.

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

**NEW SECTION.** **Sec. 1.** This act may be known and cited as the Cooper Jones Act.

**Sec. 2.** RCW 43.59.010 and 1967 ex.s. c 147 s 1 are each amended to read as follows:

**(1)** The purpose of this chapter is to establish a new agency of state government to be known as the Washington traffic safety commission. The functions and purpose of this commission shall be to find solutions to the

problems that have been created as a result of the tremendous increase of motor vehicles on our highways and the attendant traffic death and accident tolls; to plan and supervise programs for the prevention of accidents on streets and highways including but not limited to educational campaigns designed to reduce traffic accidents in cooperation with all official and unofficial organizations interested in traffic safety; to coordinate the activities at the state and local level in the development of state-wide and local traffic safety programs; to promote a uniform enforcement of traffic safety laws and establish standards for investigation and reporting of traffic accidents; to promote and improve driver education; and to authorize the governor to perform all functions required to be performed by him under the federal Highway Safety Act of 1966 (Public Law 89-564; 80 Stat. 731).

(2) The legislature finds and declares that bicycling and walking are becoming increasingly popular in Washington as clean and efficient modes of transportation, as recreational activities, and as organized sports. Future plans for the state's transportation system will require increased access and safety for bicycles and pedestrians on our common roadways, and federal transportation legislation and funding programs have created strong incentives to implement these changes quickly. As a result, many more people are likely to take up bicycling in Washington both as a leisure activity and as a convenient, inexpensive form of transportation. Bicyclists are more vulnerable to injury and accident than motorists, and should be as knowledgeable as possible about traffic laws, be highly visible and predictable when riding in traffic, and be encouraged to wear bicycle safety helmets. Hundreds of bicyclists and pedestrians are seriously injured every year in accidents, and millions of dollars are spent on health care costs associated with these accidents. There is clear evidence that organized training in the rules and techniques of safe and effective cycling can significantly reduce the incidence of serious injury and accidents, increase cooperation among road users, and significantly increase the incidence of bicycle helmet use, particularly among minors. A reduction in accidents benefits the entire community. Therefore it is appropriate for businesses and community organizations to provide donations to bicycle and pedestrian safety training programs.

**NEW SECTION. Sec. 3.** A new section is added to chapter 43.59 RCW to read as follows:

(1) The Washington state traffic safety commission shall establish a program for improving bicycle and pedestrian safety, and shall cooperate with the stakeholders and independent representatives to form an advisory committee to develop programs and create public private partnerships which promote bicycle and pedestrian safety. The traffic safety commission shall report and make recommendations to the legislative transportation committee and the fiscal committees of the house of representatives and the senate by December 1, 1998, regarding the conclusions of the advisory committee.

(2) The bicycle and pedestrian safety account is created in the state treasury. To the extent that private contributions are received by the traffic safety

commission for the purposes of bicycle and pedestrian safety programs established under this section, the appropriations from the highway safety account for this purpose shall lapse.

**NEW SECTION. Sec. 4.** A new section is added to chapter 46.20 RCW to read as follows:

The department of licensing shall incorporate a section on bicycle safety and sharing the road into its instructional publications for drivers and shall include questions in the written portion of the driver's license examination on bicycle safety and sharing the road with bicycles.

**Sec. 5.** RCW 46.20.095 and 1986 c 93 s 3 are each amended to read as follows:

The department shall include information on the proper use of the left-hand lane by motor vehicles on multilane highways and on bicyclists' and pedestrians' rights and responsibilities in its instructional publications for drivers.

**Sec. 6.** RCW 46.82.430 and 1986 c 93 s 5 are each amended to read as follows:

Instructional material used in driver training schools shall include information on the proper use of the left-hand lane by motor vehicles on multilane highways and on bicyclists' and pedestrians' rights and responsibilities and suggested riding procedures in common traffic situations.

**Sec. 7.** RCW 46.83.040 and 1961 c 12 s 46.83.040 are each amended to read as follows:

It shall be the purpose of every traffic school which may be established hereunder to instruct, educate, and inform all persons appearing for training in the proper, lawful, and safe operation of motor vehicles, including but not limited to rules of the road and the limitations of persons, vehicles, and bicycles and roads, streets, and highways under varying conditions and circumstances.

**Sec. 8.** RCW 46.52.070 and 1967 c 32 s 57 are each amended to read as follows:

(1) Any police officer of the state of Washington or of any county, city, town or other political subdivision, present at the scene of any accident or in possession of any facts concerning any accident whether by way of official investigation or otherwise shall make report thereof in the same manner as required of the parties to such accident and as fully as the facts in his possession concerning such accident will permit.

(2) The police officer shall report to the department, on a form prescribed by the director: (a) When an accident has occurred that results in a fatality or serious injury; (b) the identity of the operator of a vehicle involved in the accident when the officer has reasonable grounds to believe the operator who caused the fatality or serious injury may not be competent to operate a motor vehicle; and (c) the reason or reasons for such belief.



**Sec. 9.** RCW 46.52.100 and 1995 c 219 s 3 are each amended to read as follows:

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

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

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

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

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

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

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

It shall be the duty of the officer, prosecuting attorney, or city attorney signing the charge or information in any case involving a charge of driving under the influence of intoxicating liquor or any drug immediately to make request to the director for an abstract of convictions and forfeitures which the director shall furnish.

**Sec. 10.** RCW 46.52.120 and 1993 c 501 s 12 are each amended to read as follows:

(1) The director shall keep a case record on every motor vehicle driver licensed under the laws of this state, together with information on each driver, showing all the convictions and findings of traffic infractions certified by the courts, together with an index cross-reference record of each accident reported relating to such individual with a brief statement of the cause of the accident and whether or not the accident resulted in any fatality. The chief of the Washington state patrol shall furnish the index cross-reference record to the director, with reference to each driver involved in the reported accidents.

(2) The records shall be for the confidential use of the director, the chief of the Washington state patrol, the director of the Washington traffic safety commission, and for such police officers or other cognizant public officials as may be designated by law. Such case records shall not be offered as evidence in any court except in case appeal is taken from the order of the director, suspending, revoking, canceling, or refusing a vehicle driver's license.

(3) The director shall tabulate and analyze vehicle driver's case records and suspend, revoke, cancel, or refuse a vehicle driver's license to a person when it is deemed from facts contained in the case record of such person that it is for the best interest of public safety that such person be denied the privilege of operating a motor vehicle. The director shall also suspend a person's driver's license if the person fails to attend or complete a driver improvement interview or fails to abide by conditions of probation under RCW 46.20.335. Whenever the director orders the vehicle driver's license of any such person suspended, revoked, or canceled, or refuses the issuance of a vehicle driver's license, such suspension, revocation, cancellation, or refusal is final and effective unless appeal from the decision of the director is taken as provided by law.

**Sec. 11.** RCW 46.52.130 and 1997 c 66 s 12 are each amended to read as follows:

A certified abstract of the driving record shall be furnished only to the individual named in the abstract, an employer or prospective employer or an agent acting on behalf of an employer or prospective employer, the insurance carrier that has insurance in effect covering the employer or a prospective employer, the insurance carrier that has insurance in effect covering the named individual, the insurance carrier to which the named individual has applied, an alcohol/drug assessment or treatment agency approved by the department of social and health services, to which the named individual has applied or been assigned for evaluation or treatment, or city and county prosecuting attorneys. City attorneys

and county prosecuting attorneys may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment. The director, upon proper request, shall furnish a certified abstract covering the period of not more than the last three years to insurance companies. Upon proper request, the director shall furnish a certified abstract covering a period of not more than the last five years to state approved alcohol/drug assessment or treatment agencies, except that the certified abstract shall also include records of alcohol-related offenses as defined in RCW 46.01.260(2) covering a period of not more than the last ten years. Upon proper request, a certified abstract of the full driving record maintained by the department shall be furnished to a city or county prosecuting attorney, to the individual named in the abstract or to an employer or prospective employer or an agent acting on behalf of an employer or prospective employer of the named individual. The abstract, whenever possible, shall include an enumeration of motor vehicle accidents in which the person was driving; the total number of vehicles involved; whether the vehicles were legally parked or moving; whether the vehicles were occupied at the time of the accident; whether the accident resulted in any fatality; any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law; and the status of the person's driving privilege in this state. The enumeration shall include any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer. Certified abstracts furnished to prosecutors and alcohol/drug assessment or treatment agencies shall also indicate whether a recorded violation is an alcohol-related offense as defined in RCW 46.01.260(2) that was originally charged as one of the alcohol-related offenses designated in RCW 46.01.260(2)(b)(i).

The abstract provided to the insurance company shall exclude any information, except that related to the commission of misdemeanors or felonies by the individual, pertaining to law enforcement officers or fire fighters as defined in RCW 41.26.030, or any officer of the Washington state patrol, while driving official vehicles in the performance of occupational duty. The abstract provided to the insurance company shall include convictions for RCW 46.61.5249 and 46.61.525 except that the abstract shall report them only as negligent driving without reference to whether they are for first or second degree negligent driving. The abstract provided to the insurance company shall exclude any deferred prosecution under RCW 10.05.060, except that if a person is removed from a deferred prosecution under RCW 10.05.090, the abstract shall show the deferred prosecution as well as the removal.

The director shall collect for each abstract the sum of four dollars and fifty cents which shall be deposited in the highway safety fund.

Any insurance company or its agent receiving the certified abstract shall use it exclusively for its own underwriting purposes and shall not divulge any of the

information contained in it to a third party. No policy of insurance may be canceled, nonrenewed, denied, or have the rate increased on the basis of such information unless the policyholder was determined to be at fault. No insurance company or its agent for underwriting purposes relating to the operation of commercial motor vehicles may use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment, nor may any insurance company or its agent for underwriting purposes relating to the operation of noncommercial motor vehicles use any information contained in the abstract relative to any person's operation of commercial motor vehicles.

Any employer or prospective employer or an agent acting on behalf of an employer or prospective employer receiving the certified abstract shall use it exclusively for his or her own purpose to determine whether the licensee should be permitted to operate a commercial vehicle or school bus upon the public highways of this state and shall not divulge any information contained in it to a third party.

Any alcohol/drug assessment or treatment agency approved by the department of social and health services receiving the certified abstract shall use it exclusively for the purpose of assisting its employees in making a determination as to what level of treatment, if any, is appropriate. The agency, or any of its employees, shall not divulge any information contained in the abstract to a third party.

Release of a certified abstract of the driving record of an employee or prospective employee requires a statement signed by: (1) The employee or prospective employee that authorizes the release of the record, and (2) the employer attesting that the information is necessary to determine whether the licensee should be employed to operate a commercial vehicle or school bus upon the public highways of this state. If the employer or prospective employer authorizes an agent to obtain this information on their behalf, this must be noted in the statement.

Any violation of this section is a gross misdemeanor.

**Sec. 12.** RCW 46.20.291 and 1997 c 58 s 806 are each amended to read as follows:

The department is authorized to suspend the license of a driver upon a showing by its records or other sufficient evidence that the licensee:

(1) Has committed an offense for which mandatory revocation or suspension of license is provided by law;

(2) Has, by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in death or injury to any person or serious property damage;

(3) Has been convicted of offenses against traffic regulations governing the movement of vehicles, or found to have committed traffic infractions, with such frequency as to indicate a disrespect for traffic laws or a disregard for the safety of other persons on the highways;

(4) Is incompetent to drive a motor vehicle under RCW 46.20.031(3);

(5) Has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, as provided in RCW 46.20.289;

(6) Is subject to suspension under RCW 46.20.305;

(7) Has committed one of the prohibited practices relating to drivers' licenses defined in RCW 46.20.336; or

((7)) (8) Has been certified by the department of social and health services as a person who is not in compliance with a child support order or a residential or visitation order as provided in RCW 74.20A.320.

Sec. 13. RCW 46.20.305 and 1965 ex.s. c 121 s 26 are each amended to read as follows:

(1) The department, having good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed may upon notice require him or her to submit to an examination.

(2) The department shall require a driver reported under RCW 46.52.070(2), when a fatality occurred, to submit to an examination. The examination must be completed no later than one hundred twenty days after the accident report required under RCW 46.52.070(2) is received by the department unless the department, at the request of the operator, extends the time for examination.

(3) The department may require a driver reported under RCW 46.52.070(2) to submit to an examination, or suspend the person's license subject to RCW 46.20.322, when a serious injury occurred. The examination must be completed no later than one hundred twenty days after the accident report required under RCW 46.52.070(2) is received by the department.

(4) The department may in addition to an examination under this section require such person to obtain a certificate showing his or her condition signed by a licensed physician or other proper authority designated by the department.

(5) Upon the conclusion of ~~((such))~~ an examination under this section the department shall take driver improvement action as may be appropriate and may suspend or revoke the license of such person or permit him or her to retain such license, or may issue a license subject to restrictions as permitted under RCW 46.20.041. The department may suspend or revoke the license of such person who refuses or neglects to submit to such examination.

(6) The department may require payment of a fee by a person subject to examination under this section. The department shall set the fee in an amount that is sufficient to cover the additional cost of administering examinations required by this section.

NEW SECTION. Sec. 14. The department of licensing may adopt rules as necessary to implement this act.

NEW SECTION. Sec. 15. Sections 8 through 14 of this act take effect January 1, 1999.

**Sec. 16.** RCW 46.37.280 and 1987 c 330 s 713 are each amended to read as follows:

(1) During the times specified in RCW 46.37.020, any lighted lamp or illuminating device upon a motor vehicle, other than head lamps, spot lamps, auxiliary lamps, flashing turn signals, emergency vehicle warning lamps, warning lamps authorized by the state patrol and school bus warning lamps, which projects a beam of light of an intensity greater than three hundred candlepower shall be so directed that no part of the high intensity portion of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

(2) Except as required in RCW 46.37.190 no person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying a red light visible from directly in front of the center thereof.

(3) Flashing lights are prohibited except as required in RCW 46.37.190, 46.37.200, 46.37.210, 46.37.215, and 46.37.300, ~~((and))~~ warning lamps authorized by the state patrol, and light-emitting diode flashing taillights on bicycles.

**Sec. 17.** RCW 46.61.780 and 1987 c 330 s 746 are each amended to read as follows:

(1) Every bicycle when in use during the hours of darkness as defined in RCW 46.37.020 shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred feet to the front and with a red reflector on the rear of a type approved by the state patrol which shall be visible from all distances ~~((from one hundred feet))~~ up to six hundred feet to the rear when directly in front of lawful lower beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred feet to the rear may be used in addition to the red reflector. A light-emitting diode flashing taillight visible from a distance of five hundred feet to the rear may also be used in addition to the red reflector.

(2) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.

**NEW SECTION.** **Sec. 18.** The sum of one hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1999, from the highway safety account to the bicycle and pedestrian safety account for the purposes of this act.

Passed the House March 12, 1998.

Passed the Senate March 12, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

**CHAPTER 166**

[Engrossed Senate Bill 6325]

**ADDITIONAL STATE FERRY VESSELS**

AN ACT Relating to additional state ferry vessels; adding new sections to chapter 47.60 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 47.60 RCW to read as follows:

The legislature finds and declares that there is a compelling need for the construction of additional state ferry vessels and corresponding terminal improvements in order to provide more capacity and frequent service to meet the forecasted travel demands of citizens traveling on Puget Sound ferry routes. The vessel technology required must provide additional travel options for high growth ferry routes through increased passenger-only ferry service.

The 1989 west corridor study evaluated cross-sound travel through the year 2020 and identified the Southworth to Seattle and the Kingston to Seattle passenger-only ferry routes as promising based on criteria evaluating cost effectiveness, time savings, physical constraints to operation, nonduplication of current service, and ability to relieve congestion.

Furthermore, as a result of legislative direction provided in the 1991-93 transportation budget to the state transportation commission to evaluate and determine the location of new passenger-only ferry routes, the commission reviewed several service alternatives, determined that the Southworth to Seattle and Kingston to Seattle routes ranked highest, and directed the Washington state ferries to proceed with the design and permitting processes for passenger-only terminals at both Southworth and Kingston.

**NEW SECTION. Sec. 2.** A new section is added to chapter 47.60 RCW to read as follows:

The department is authorized to proceed with the acquisition, procurement, and construction of a maximum of four passenger-only vessels that respond to the service demands of state ferry service on the Southworth to Seattle and Kingston to Seattle ferry routes, including the terminal and docking facilities necessary to accommodate such service. The acquisition, procurement, and construction of vessels and terminals authorized herein shall be undertaken in accordance with the authority provided in RCW 47.56.030.

**NEW SECTION. Sec. 3.** A new section is added to chapter 47.60 RCW to read as follows:

The department's authority to proceed with the acquisition, procurement, and construction of vessels and terminals authorized under section 2 of this act is contingent on a legislative appropriation approving that authority: **PROVIDED**, That the appropriation does not reduce the current level of funding for the

maintenance and repair of vessels and terminals in service as of the effective date of this act.

**NEW SECTION. Sec. 4.** If this act is not referred to by bill or chapter number in a transportation budget, or an omnibus appropriations act, that, by December 31, 1998, either becomes law under Article III, section 12 of the state Constitution or is approved by the people of this state, this act is null and void on December 31, 1998.

Passed the Senate February 17, 1998.

Passed the House March 5, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

**CHAPTER 167**

[House Bill 2476]

**MACHINERY AND IMPLEMENTS USED IN FARMING TRANSPORTED OUTSIDE THE STATE—TAX EXEMPTIONS**

AN ACT Relating to sales tax exemptions for parts for and repairs to machinery and implements for use in conducting a farming activity transported immediately outside the state; and amending RCW 82.08.0268.

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

**Sec. 1.** RCW 82.08.0268 and 1980 c 37 s 35 are each amended to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales to nonresidents of this state for use outside of this state of:

- (1) Machinery and implements for use in conducting a farming activity((:));
- (2) Parts for machinery and implements for use in conducting a farming activity; and
- (3) Labor and services for the repair of machinery, implements, and parts for use in conducting a farming activity.

when such machinery ~~((and))~~, implements, and parts will be transported immediately outside the state. As proof of exemption, an affidavit or certification in such form as the department of revenue shall require shall ~~((be made for each such sale, to))~~ be retained as a business record of the seller.

Passed the House February 11, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.



## CHAPTER 168

[Engrossed House Bill 1042]

DENTAL APPLIANCES, DEVICES, RESTORATIONS, AND SUBSTITUTES—  
TAXATION REVISIONS

AN ACT Relating to taxation of dental appliances, devices, restorations, and substitutes; amending RCW 82.04.120, 82.08.0283, and 82.12.0277; and providing an effective date.

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

**Sec. 1.** RCW 82.04.120 and 1997 c 384 s 1 are each amended to read as follows:

"To manufacture" embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use, and shall include: (1) The production or fabrication of special made or custom made articles; and (2) the production or fabrication of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician.

"To manufacture" shall not include: Conditioning of seed for use in planting; cubing hay or alfalfa; or activities which consist of cutting, grading, or ice glazing seafood which has been cooked, frozen, or canned outside this state.

**Sec. 2.** RCW 82.08.0283 and 1997 c 224 s 1 are each amended to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of insulin; prosthetic devices and the components thereof; dental appliances, devices, restorations, and substitutes, and the components thereof, including but not limited to full and partial dentures, crowns, inlays, fillings, braces, and retainers; orthotic devices prescribed for an individual by a person licensed under chapters 18.25, 18.57, or 18.71 RCW; hearing instruments dispensed or fitted by a person licensed or certified under chapter 18.35 RCW, and the components thereof; medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; ostomic items; and medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems prescribed for an individual by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual. In addition, the tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of ~~((hearing instruments))~~ any of the items exempted under this section.

**Sec. 3.** RCW 82.12.0277 and 1997 c 224 s 2 are each amended to read as follows:

The provisions of this chapter shall not apply in respect to the use of insulin; prosthetic devices and the components thereof; dental appliances, devices, restorations, and substitutes, and the components thereof, including but not limited to full and partial dentures, crowns, inlays, fillings, braces, and retainers; orthotic devices prescribed for an individual by a person licensed under chapters 18.25, 18.57, or 18.71 RCW; hearing instruments dispensed or fitted by a person licensed or certified under chapter 18.35 RCW, and the components thereof; medicines of inineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; ostomic items; and medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems prescribed for an individual by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual.

NEW SECTION. Sec. 4. This act takes effect October 1, 1998.

Passed the House March 3, 1998.

Passed the Senate March 10, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

## CHAPTER 169

[Substitute House Bill 1211]

### MAKING ACCIDENT REPORTS AVAILABLE TO THE TRAFFIC SAFETY COMMISSION

AN ACT Relating to making accident reports available to the traffic safety commission; and amending RCW 46.52.060.

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

Sec. I. RCW 46.52.060 and 1979 c 158 s 161 are each amended to read as follows:

It shall be the duty of the chief of the Washington state patrol to file, tabulate, and analyze all accident reports and to publish annually, immediately following the close of each fiscal year, and monthly during the course of the year, statistical information based thereon showing the number of accidents, the location, the frequency and circumstances thereof and other statistical information which may prove of assistance in determining the cause of vehicular accidents.

Such accident reports and analysis or reports thereof shall be available to the director of licensing, the department of transportation, the utilities and transportation commission, the traffic safety commission, and other public entities authorized by the chief of the Washington state patrol, or their duly authorized representatives, for further tabulation and analysis for pertinent data relating to the regulation of highway traffic, highway construction, vehicle operators and all other purposes, and to publish information so derived as may be deemed of publication value.

Passed the House January 16, 1998.  
Passed the Senate March 4, 1998.  
Approved by the Governor March 27, 1998.  
Filed in Office of Secretary of State March 27, 1998.

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## CHAPTER 170

[Engrossed Second Substitute House Bill 1328]  
HANDLING OF HAY, ALFALFA, AND SEED—  
BUSINESS AND OCCUPATION TAX REVISIONS

AN ACT Relating to business and occupation tax on the handling of hay, alfalfa, and seed; amending RCW 82.04.290; reenacting and amending RCW 82.04.260; adding new sections to chapter 82.04 RCW; providing an effective date; and providing contingent effective dates.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 82.04 RCW to read as follows:

Upon every person engaging within this state in the business of making wholesale sales to farmers of seed conditioned for use in planting and not packaged for retail sale, or in the business of conditioning seed for planting owned by others; the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.011 percent.

For the purposes of this section, "seed" means seed potatoes and all other "agricultural seed" as defined in RCW 15.49.011. "Seed" does not include "flower seeds" or "vegetable seeds" as defined in RCW 15.49.011, or any other seeds or propagative portions of plants used to grow ornamental flowers or used to grow any type of bush, moss, fern, shrub, or tree.

**NEW SECTION.** Sec. 2. A new section is added to chapter 82.04 RCW to read as follows:

(1) This chapter does not apply to amounts received by a person engaging within this state in the business of: (a) Making wholesale sales to farmers of seed conditioned for use in planting and not packaged for retail sale; or (b) conditioning seed for planting owned by others.

(2) For the purposes of this section, "seed" means seed potatoes and all other "agricultural seed" as defined in RCW 15.49.011. "Seed" does not include "flower seeds" or "vegetable seeds" as defined in RCW 15.49.011, or any other seeds or propagative portions of plants used to grow ornamental flowers or used to grow any type of bush, moss, fern, shrub, or tree.

Sec. 3. RCW 82.04.290 and 1997 c 7 s 2 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of providing international investment management services, as to such persons, the amount of tax with respect to such business shall be equal to the gross income or gross proceeds of sales of the business multiplied by a rate of 0.275 percent.

(2) Upon every person engaging within this state in any business activity other than or in addition to those enumerated in RCW 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, ~~((and))~~ 82.04.280, and section 1 of this act, and subsection (1) of this section; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 1.5 percent.

This section includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale." The value of advertising, demonstration, and promotional supplies and materials furnished to an agent by his principal or supplier to be used for informational, educational and promotional purposes shall not be considered a part of the agent's remuneration or commission and shall not be subject to taxation under this section.

**Sec. 4.** RCW 82.04.260 and 1996 c 148 s 2 and 1996 c 115 s 1 are each reenacted and amended to read as follows:

(1) Upon every person engaging within this state in the business of buying wheat, oats, dry peas, dry beans, lentils, triticale, canola, corn, rye and barley, but not including any manufactured ~~((or processed))~~ products thereof, and selling the same at wholesale; the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.011 percent.

(2) Upon every person engaging within this state in the business of manufacturing wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola byproducts, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business shall be equal to the value of the flour, pearl barley, oil, canola meal, or canola byproduct manufactured, multiplied by the rate of 0.138 percent.

(3) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business shall be equal to the value of the peas split or processed, multiplied by the rate of 0.275 percent.

(4) Upon every person engaging within this state in the business of manufacturing seafood products which remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured, multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of manufacturing by canning, preserving, freezing, processing, or dehydrating fresh fruits and vegetables, or selling at wholesale fresh fruits and vegetables canned, preserved, frozen, processed, or dehydrated by the seller and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business shall be equal to the value of the products canned, preserved, frozen, processed, or dehydrated

multiplied by the rate of 0.33 percent. As proof of sale to a person who transports in the ordinary course of business goods out of this state, the seller shall annually provide a statement in a form prescribed by the department and retain the statement as a business record.

(6) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(7) Upon every person engaging within this state in the business of slaughtering, breaking a ham or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(8) Upon every person engaging within this state in the business of making sales, at retail or wholesale, of nuclear fuel assemblies manufactured by that person, as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the assemblies multiplied by the rate of 0.275 percent.

(9) Upon every person engaging within this state in the business of manufacturing nuclear fuel assemblies, as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured multiplied by the rate of 0.275 percent.

(10) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(11) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.363 percent.

(12) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such activities multiplied by the rate of 0.363 percent. Persons subject to taxation under this subsection shall be exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a

warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(13) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business shall be equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state shall be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(14) Upon every person engaging within this state as an insurance agent, insurance broker, or insurance solicitor licensed under chapter 48.17 RCW; as to such persons, the amount of the tax with respect to such licensed activities shall be equal to the gross income of such business multiplied by the rate of 0.55 percent.

(15) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities shall be equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter. The moneys collected under this subsection shall be deposited in the health services account created under RCW 43.72.900.

NEW SECTION. Sec. 5. (1) Sections 1 and 3 of this act take effect only if House Bill No. 2335 fails to become law.

(2) Section 2 of this act takes effect only if House Bill No. 2335 becomes law.

NEW SECTION. Sec. 6. This act takes effect July 1, 1998.

Passed the House February 27, 1998.

Passed the Senate March 11, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

**CHAPTER 171**

[House Bill 1487]

**TRANSPORTATION PLANNING**

AN ACT Relating to transportation planning; amending RCW 36.70A.040, 36.70A.070, 36.70A.200, 36.70A.210, 47.05.021, 47.05.030, 47.80.023, and 47.80.030; and adding a new section to chapter 47.06 RCW.

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

**Sec. I.** RCW 36.70A.040 and 1995 c 400 s 1 are each amended to read as follows:

(1) Each county that has both a population of fifty thousand or more and, until May 16, 1995, has had its population increase by more than ten percent in the previous ten years or, on or after May 16, 1995, has had its population increase by more than seventeen percent in the previous ten years, and the cities located within such county, and any other county regardless of its population that has had its population increase by more than twenty percent in the previous ten years, and the cities located within such county, shall conform with all of the requirements of this chapter. However, the county legislative authority of such a county with a population of less than fifty thousand population may adopt a resolution removing the county, and the cities located within the county, from the requirements of adopting comprehensive land use plans and development regulations under this chapter if this resolution is adopted and filed with the department by December 31, 1990, for counties initially meeting this set of criteria, or within sixty days of the date the office of financial management certifies that a county meets this set of criteria under subsection (5) of this section.

Once a county meets either of these sets of criteria, the requirement to conform with all of the requirements of this chapter remains in effect, even if the county no longer meets one of these sets of criteria.

(2) The county legislative authority of any county that does not meet either of the sets of criteria established under subsection (1) of this section may adopt a resolution indicating its intention to have subsection (1) of this section apply to the county. Each city, located in a county that chooses to plan under this subsection, shall conform with all of the requirements of this chapter. Once such a resolution has been adopted, the county and the cities located within the county remain subject to all of the requirements of this chapter.

(3) Any county or city that is initially required to conform with all of the requirements of this chapter under subsection (1) of this section shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city located within the county shall designate critical areas, agricultural lands, forest lands, and mineral resource lands, and adopt development regulations conserving these designated agricultural lands, forest lands, and mineral resource lands and protecting these designated critical areas, under RCW 36.70A.170 and 36.70A.060; (c) the county shall designate and take other actions related to urban

growth areas under RCW 36.70A.110; (d) if the county has a population of fifty thousand or more, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan on or before July 1, 1994, and if the county has a population of less than fifty thousand, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan by January 1, 1995, but if the governor makes written findings that a county with a population of less than fifty thousand or a city located within such a county is not making reasonable progress toward adopting a comprehensive plan and development regulations the governor may reduce this deadline for such actions to be taken by no more than one hundred eighty days. Any county or city subject to this subsection may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of community, trade, and economic development of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(4) Any county or city that is required to conform with all the requirements of this chapter, as a result of the county legislative authority adopting its resolution of intention under subsection (2) of this section, shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city that is located within the county shall adopt development regulations conserving agricultural lands, forest lands, and mineral resource lands it designated under RCW 36.70A.060 within one year of the date the county legislative authority adopts its resolution of intention; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; and (d) the county and each city that is located within the county shall adopt a comprehensive plan and development regulations that are consistent with and implement the comprehensive plan not later than four years from the date the county legislative authority adopts its resolution of intention, but a county or city may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of community, trade, and economic development of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(5) If the office of financial management certifies that the population of a county that previously had not been required to plan under subsection (1) or (2) of this section has changed sufficiently to meet either of the sets of criteria specified under subsection (1) of this section, and where applicable, the county legislative authority has not adopted a resolution removing the county from these requirements as provided in subsection (1) of this section, the county and each city within such county shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city located within the county shall



adopt development regulations under RCW 36.70A.060 conserving agricultural lands, forest lands, and mineral resource lands it designated within one year of the certification by the office of financial management; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; and (d) the county and each city located within the county shall adopt a comprehensive land use plan and development regulations that are consistent with and implement the comprehensive plan within four years of the certification by the office of financial management, but a county or city may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of community, trade, and economic development of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(6) A copy of each document that is required under this section shall be submitted to the department at the time of its adoption.

(7) Cities and counties planning under this chapter must amend the transportation element of the comprehensive plan to be in compliance with this chapter and chapter 47.80 RCW no later than December 31, 2000.

Sec. 2. RCW 36.70A.070 and 1997 c 429 s 7 are each amended to read as follows:

The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140.

Each comprehensive plan shall include a plan, scheme, or design for each of the following:

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, general aviation airports, public utilities, public facilities, and other land uses. The land use element shall include population densities, building intensities, and estimates of future population growth. The land use element shall provide for protection of the quality and quantity of ground water used for public water supplies. Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) A housing element ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs; (b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing, including, but not limited to, government-assisted

housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent.

(4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. In order to achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;

(ii) Assuring visual compatibility of rural development with the surrounding rural area;

(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and ground water resources; and

(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments. A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection. An industrial area is not required to be principally designed to serve the existing and projected rural population;

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide

public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter;

(B) On the date the county adopted a resolution under RCW 36.70A.040(2), in a county that is planning under all of the provisions of this chapter under RCW 36.70A.040(2); or

(C) On the date the office of financial management certifies the county's population as provided in RCW 36.70A.040(5), in a county that is planning under all of the provisions of this chapter pursuant to RCW 36.70A.040(5).

(e) Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.

(6) A transportation element that implements, and is consistent with, the land use element.

(a) The transportation element shall include the following subelements:

((\*) (i) Land use assumptions used in estimating travel;

((b)) (ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(iii) Facilities and services needs, including:

((\*) (A) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the city or county's jurisdiction boundaries;

((\*) (B) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

((\*\*)) (C) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the department of transportation's six-year investment program. The concurrency requirements of (b) of this subsection do not apply to transportation facilities and services of state-wide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes.

In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in (b) of this subsection:

(D) Specific actions and requirements for bringing into compliance ~~(any)~~ locally owned transportation facilities or services that are below an established level of service standard;

~~((+))~~ (E) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

~~((+))~~ (F) Identification of state and local system ~~((expansion needs and transportation system management))~~ needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the state-wide multimodal transportation plan required under chapter 47.06 RCW;

~~((e))~~ (iv) Finance, including:

~~((#))~~ (A) An analysis of funding capability to judge needs against probable funding resources;

~~((#))~~ (B) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the six-year improvement program developed by the department of transportation as required by RCW 47.05.030;

~~((#))~~ (C) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

~~((#))~~ (v) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

~~((e))~~ (vi) Demand-management strategies.

(b) After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6) "concurrent with the development" shall mean that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

(c) The transportation element described in this subsection (6), and the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties,

~~((and))~~ RCW 35.58.2795 for public transportation systems, and RCW 47.05.030 for the state, must be consistent.

Sec. 3. RCW 36.70A.200 and 1991 sp.s. c 32 s 1 are each amended to read as follows:

(1) The comprehensive plan of each county and city that is planning under this chapter shall include a process for identifying and siting essential public facilities. Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in section 7 of this act, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, and group homes.

(2) The office of financial management shall maintain a list of those essential state public facilities that are required or likely to be built within the next six years. The office of financial management may at any time add facilities to the list. No local comprehensive plan or development regulation may preclude the siting of essential public facilities.

Sec. 4. RCW 36.70A.210 and 1994 c 249 s 28 are each amended to read as follows:

(1) The legislature recognizes that counties are regional governments within their boundaries, and cities are primary providers of urban governmental services within urban growth areas. For the purposes of this section, a "county-wide planning policy" is a written policy statement or statements used solely for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. This framework shall ensure that city and county comprehensive plans are consistent as required in RCW 36.70A.100. Nothing in this section shall be construed to alter the land-use powers of cities.

(2) The legislative authority of a county that plans under RCW 36.70A.040 shall adopt a county-wide planning policy in cooperation with the cities located in whole or in part within the county as follows:

(a) No later than sixty calendar days from July 16, 1991, the legislative authority of each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040 shall convene a meeting with representatives of each city located within the county for the purpose of establishing a collaborative process that will provide a framework for the adoption of a county-wide planning policy. In other counties that are required or choose to plan under RCW 36.70A.040, this meeting shall be convened no later than sixty days after the date the county adopts its resolution of intention or was certified by the office of financial management.

(b) The process and framework for adoption of a county-wide planning policy specified in (a) of this subsection shall determine the manner in which the county and the cities agree to all procedures and provisions including but not limited to desired planning policies, deadlines, ratification of final agreements and demonstration thereof, and financing, if any, of all activities associated therewith.

(c) If a county fails for any reason to convene a meeting with representatives of cities as required in (a) of this subsection, the governor may immediately impose any appropriate sanction or sanctions on the county from those specified under RCW 36.70A.340.

(d) If there is no agreement by October 1, 1991, in a county that was required or chose to plan under RCW 36.70A.040 as of June 1, 1991, or if there is no agreement within one hundred twenty days of the date the county adopted its resolution of intention or was certified by the office of financial management in any other county that is required or chooses to plan under RCW 36.70A.040, the governor shall first inquire of the jurisdictions as to the reason or reasons for failure to reach an agreement. If the governor deems it appropriate, the governor may immediately request the assistance of the department of community, trade, and economic development to mediate any disputes that preclude agreement. If mediation is unsuccessful in resolving all disputes that will lead to agreement, the governor may impose appropriate sanctions from those specified under RCW 36.70A.340 on the county, city, or cities for failure to reach an agreement as provided in this section. The governor shall specify the reason or reasons for the imposition of any sanction.

(e) No later than July 1, 1992, the legislative authority of each county that was required or chose to plan under RCW 36.70A.040 as of June 1, 1991, or no later than fourteen months after the date the county adopted its resolution of intention or was certified by the office of financial management the county legislative authority of any other county that is required or chooses to plan under RCW 36.70A.040, shall adopt a county-wide planning policy according to the process provided under this section and that is consistent with the agreement pursuant to (b) of this subsection, and after holding a public hearing or hearings on the proposed county-wide planning policy.

(3) A county-wide planning policy shall at a minimum, address the following:

(a) Policies to implement RCW 36.70A.110;

(b) Policies for promotion of contiguous and orderly development and provision of urban services to such development;

(c) Policies for siting public capital facilities of a county-wide or state-wide nature, including transportation facilities of state-wide significance as defined in section 7 of this act;

(d) Policies for county-wide transportation facilities and strategies;

(e) Policies that consider the need for affordable housing, such as housing for all economic segments of the population and parameters for its distribution;

(f) Policies for joint county and city planning within urban growth areas;

(g) Policies for county-wide economic development and employment; and

(h) An analysis of the fiscal impact.

(4) Federal agencies and Indian tribes may participate in and cooperate with the county-wide planning policy adoption process. Adopted county-wide planning policies shall be adhered to by state agencies.

(5) Failure to adopt a county-wide planning policy that meets the requirements of this section may result in the imposition of a sanction or sanctions on a county or city within the county, as specified in RCW 36.70A.340. In imposing a sanction or sanctions, the governor shall specify the reasons for failure to adopt a county-wide planning policy in order that any imposed sanction or sanctions are fairly and equitably related to the failure to adopt a county-wide planning policy.

(6) Cities and the governor may appeal an adopted county-wide planning policy to the growth management hearings board within sixty days of the adoption of the county-wide planning policy.

(7) Multicounty planning policies shall be adopted by two or more counties, each with a population of four hundred fifty thousand or more, with contiguous urban areas and may be adopted by other counties, according to the process established under this section or other processes agreed to among the counties and cities within the affected counties throughout the multicounty region.

Sec. 5. RCW 47.05.021 and 1993 c 490 s 2 are each amended to read as follows:

(1) The transportation commission is hereby directed to conduct periodic analyses of the entire state highway system, report thereon to the chairs of the transportation committees of the senate and house of representatives, including one copy to the staff of each of the committees, biennially and based thereon, to subdivide, classify, and subclassify according to their function and importance all designated state highways and those added from time to time and periodically review and revise the classifications into the following three functional classes:

(a) The "principal arterial system" shall consist of a connected network of rural arterial routes with appropriate extensions into and through urban areas, including all routes designated as part of the interstate system, which serve corridor movements having travel characteristics indicative of substantial state-wide and interstate travel;

(b) The "minor arterial system" shall, in conjunction with the principal arterial system, form a rural network of arterial routes linking cities and other activity centers which generate long distance travel, and, with appropriate extensions into and through urban areas, form an integrated network providing interstate and interregional service; and

(c) The "collector system" shall consist of routes which primarily serve the more important intercounty, intracounty, and intraurban travel corridors, collect traffic from the system of local access roads and convey it to the arterial system, and on which, regardless of traffic volume, the predominant travel distances are shorter than on arterial routes.

(2) In making the functional classification the transportation commission shall adopt and give consideration to criteria consistent with this section and federal regulations relating to the functional classification of highways, including but not limited to the following:

(a) Urban population centers within and without the state stratified and ranked according to size;



(b) Important traffic generating economic activities, including but not limited to recreation, agriculture, government, business, and industry;

(c) Feasibility of the route, including availability of alternate routes within and without the state;

(d) Directness of travel and distance between points of economic importance;

(e) Length of trips;

(f) Character and volume of traffic;

(g) Preferential consideration for multiple service which shall include public transportation;

(h) Reasonable spacing depending upon population density; and

(i) System continuity.

(3) The transportation commission shall designate ~~((a system of))~~ state highways ~~((that have))~~ of state-wide significance under section 7 of this act, and shall submit a list of such facilities for adoption by the 1999 legislature. This state-wide system shall include at a minimum interstate highways and other state-wide principal arterials that are needed to connect major communities across the state and support the state's economy.

(4) The transportation commission shall designate a freight and goods transportation system. This state-wide system shall include state highways, county roads, and city streets. The commission, in cooperation with cities and counties, shall review and make recommendations to the legislature regarding policies governing weight restrictions and road closures which affect the transportation of freight and goods. The first report is due by December 15, 1993, and biennially thereafter.

**Sec. 6.** RCW 47.05.030 and 1993 c 490 s 3 are each amended to read as follows:

The transportation commission shall adopt a comprehensive six-year investment program specifying program objectives and performance measures for the preservation and improvement programs defined in this section. In the specification of investment program objectives and performance measures, the transportation commission, in consultation with the Washington state department of transportation, shall define and adopt standards for effective programming and prioritization practices including a needs analysis process. The needs analysis process shall ensure the identification of problems and deficiencies, the evaluation of alternative solutions and trade-offs, and estimations of the costs and benefits of prospective projects. The investment program shall be revised biennially, effective on July 1st of odd-numbered years. The investment program shall be based upon the needs identified in the state-owned highway component of the state-wide multimodal transportation plan as defined in RCW 47.01.071(3).

(1) The preservation program shall consist of those investments necessary to preserve the existing state highway system and to restore existing safety features, giving consideration to lowest life cycle costing. The comprehensive six-year investment program for preservation shall identify projects for two years and an investment plan for the remaining four years.

(2) The improvement program shall consist of investments needed to address identified deficiencies on the state highway system to improve mobility, safety, support for the economy, and protection of the environment. The six-year investment program for improvements shall identify projects for two years and major deficiencies proposed to be addressed in the six-year period giving consideration to relative benefits and life cycle costing. The transportation commission shall give higher priority for correcting identified deficiencies on those facilities classified as facilities of state-wide significance as defined in section 7 of this act.

The transportation commission shall approve and present the comprehensive six-year investment program to the legislature in support of the biennial budget request under RCW 44.40.070 and 44.40.080.

**NEW SECTION.** Sec. 7. A new section is added to chapter 47.06 RCW to read as follows:

The legislature declares the following transportation facilities and services to be of state-wide significance: The interstate highway system, interregional state principal arterials including ferry connections that serve state-wide travel, intercity passenger rail services, intercity high-speed ground transportation, major passenger intermodal terminals excluding all airport facilities and services, the freight railroad system, the Columbia/Snake navigable river system, marine port facilities and services that are related solely to marine activities affecting international and interstate trade, and high-capacity transportation systems serving regions as defined in RCW 81.104.015. The department, in cooperation with regional transportation planning organizations, counties, cities, transit agencies, public ports, private railroad operators, and private transportation providers, as appropriate, shall plan for improvements to transportation facilities and services of state-wide significance in the state-wide multimodal plan. Improvements to facilities and services of state-wide significance identified in the state-wide multimodal plan are essential state public facilities under RCW 36.70A.200.

The department of transportation, in consultation with local governments, shall set level of service standards for state highways and state ferry routes of state-wide significance. Although the department shall consult with local governments when setting level of service standards, the department retains authority to make final decisions regarding level of service standards for state highways and state ferry routes of state-wide significance. In establishing level of service standards for state highways and state ferry routes of state-wide significance, the department shall consider the necessary balance between providing for the free interjurisdictional movement of people and goods and the needs of local communities using these facilities.

Sec. 8. RCW 47.80.023 and 1994 c 158 s 2 are each amended to read as follows:

Each regional transportation planning organization shall have the following duties:

(1) Prepare and periodically update a transportation strategy for the region. The strategy shall address alternative transportation modes and transportation demand management measures in regional corridors and shall recommend preferred transportation policies to implement adopted growth strategies. The strategy shall serve as a guide in preparation of the regional transportation plan.

(2) Prepare a regional transportation plan as set forth in RCW 47.80.030 that is consistent with county-wide planning policies if such have been adopted pursuant to chapter 36.70A RCW, with county, city, and town comprehensive plans, and state transportation plans.

(3) Certify by December 31, 1996, that the transportation elements of comprehensive plans adopted by counties, cities, and towns within the region reflect the guidelines and principles developed pursuant to RCW 47.80.026, are consistent with the adopted regional transportation plan, and, where appropriate, conform with the requirements of RCW 36.70A.070.

(4) Where appropriate, certify that county-wide planning policies adopted under RCW 36.70A.210 and the adopted regional transportation plan are consistent.

(5) Develop, in cooperation with the department of transportation, operators of public transportation services and local governments within the region, a six-year regional transportation improvement program which proposes regionally significant transportation projects and programs and transportation demand management measures. The regional transportation improvement program shall be based on the programs, projects, and transportation demand management measures of regional significance as identified by transit agencies, cities, and counties pursuant to RCW 35.58.2795, 35.77.010, and 36.81.121, respectively. The program shall include a priority list of projects and programs, project segments and programs, transportation demand management measures, and a specific financial plan that demonstrates how the transportation improvement program can be funded. The program shall be updated at least every two years for the ensuing six-year period.

(6) Designate a lead planning agency to coordinate preparation of the regional transportation plan and carry out the other responsibilities of the organization. The lead planning agency may be a regional organization, a component county, city, or town agency, or the appropriate Washington state department of transportation district office.

(7) Review level of service methodologies used by cities and counties planning under chapter 36.70A RCW to promote a consistent regional evaluation of transportation facilities and corridors.

(8) Work with cities, counties, transit agencies, the department of transportation, and others to develop level of service standards or alternative transportation performance measures.

Sec. 9. RCW 47.80.030 and 1994 c 158 s 4 are each amended to read as follows:

(1) Each regional transportation planning organization shall develop in cooperation with the department of transportation, providers of public transportation and high capacity transportation, ports, and local governments within the region, adopt, and periodically update a regional transportation plan that:

(a) Is based on a least cost planning methodology that identifies the most cost-effective facilities, services, and programs;

(b) Identifies existing or planned transportation facilities, services, and programs, including but not limited to major roadways including state highways and regional arterials, transit and nonmotorized services and facilities, multimodal and intermodal facilities, marine ports and airports, railroads, and noncapital programs including transportation demand management that should function as an integrated regional transportation system, giving emphasis to those facilities, services, and programs that exhibit one or more of the following characteristics:

(i) ~~((Physically))~~ Crosses member county lines;

(ii) Is or will be used by a significant number of people who live or work outside the county in which the facility, service, or project is located;

(iii) Significant impacts are expected to be felt in more than one county;

(iv) Potentially adverse impacts of the facility, service, program, or project can be better avoided or mitigated through adherence to regional policies; ~~((and))~~

(v) Transportation needs addressed by a project have been identified by the regional transportation planning process and the remedy is deemed to have regional significance; and

(vi) Provides for system continuity;

(c) Establishes level of service standards ~~((at a minimum for all))~~ for state highways and state ferry routes, with the exception of transportation facilities of state-wide significance as defined in section 7 of this act. These regionally established level of service standards for state highways and state ferries shall be developed jointly with the department of transportation, to encourage consistency across jurisdictions. In establishing level of service standards for state highways and state ferries, consideration shall be given for the necessary balance between providing for the free interjurisdictional movement of people and goods and the needs of local commuters using state facilities;

(d) Includes a financial plan demonstrating how the regional transportation plan can be implemented, indicating resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommending any innovative financing techniques to finance needed facilities, services, and programs;

(e) Assesses regional development patterns, capital investment and other measures necessary to:

(i) Ensure the preservation of the existing regional transportation system, including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, as well as operations,

maintenance, modernization, and rehabilitation of existing and future transit, railroad systems and corridors, and nonmotorized facilities; and

(ii) Make the most efficient use of existing transportation facilities to relieve vehicular congestion and maximize the mobility of people and goods;

(f) Sets forth a proposed regional transportation approach, including capital investments, service improvements, programs, and transportation demand management measures to guide the development of the integrated, multimodal regional transportation system; and

(g) Where appropriate, sets forth the relationship of high capacity transportation providers and other public transit providers with regard to responsibility for, and the coordination between, services and facilities.

(2) The organization shall review the regional transportation plan biennially for currency and forward the adopted plan along with documentation of the biennial review to the state department of transportation.

(3) All transportation projects, programs, and transportation demand management measures within the region that have an impact upon regional facilities or services must be consistent with the plan and with the adopted regional growth and transportation strategies.

Passed the House March 7, 1998.

Passed the Senate March 5, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

## CHAPTER 172

[House Bill 2141]

### TERMINAL SAFETY AUDIT PENALTIES—REVISIONS

AN ACT Relating to terminal safety audit penalties; amending RCW 46.32.100; and prescribing penalties.

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

**Sec. 1.** RCW 46.32.100 and 1995 c 272 s 3 are each amended to read as follows:

In addition to all other penalties provided by law, a commercial motor vehicle that is subject to terminal safety audits under this chapter and an officer, agent, or employee of a company operating a commercial motor vehicle who violates or who procures, aids, or abets in the violation of this title or any order or rule of the state patrol is liable for a penalty of one hundred dollars for each violation, except for each violation of 49 C.F.R. Pt. 382, controlled substances and alcohol use and testing, 49 C.F.R. Sec. 391.15, disqualification of drivers, and 49 C.F.R. Sec. 396.9(c)(2), moving a vehicle placed out of service before the out of service defects have been satisfactorily repaired, for which the person is liable for a penalty of five hundred dollars. Each violation is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation.

The penalty provided in this section is due and payable when the person incurring it receives a notice in writing from the patrol describing the violation and advising the person that the penalty is due. The patrol may, upon written application for review, received within fifteen days, remit or mitigate a penalty provided for in this section or discontinue a prosecution to recover the penalty upon such terms it deems proper and may ascertain the facts upon all such applications in such manner and under such rules as it deems proper. If the amount of the penalty is not paid to the patrol within fifteen days after receipt of the notice imposing the penalty, or application for remission or mitigation has not been made within fifteen days after the violator has received notice of the disposition of the application, the attorney general shall bring an action in the name of the state of Washington in the superior court of Thurston county or of some other county in which the violator does business, to recover the penalty. In all such actions the procedure and rules of evidence are the same as an ordinary civil action except as otherwise provided in this chapter. All penalties recovered under this section shall be paid into the state treasury and credited to the state patrol highway account of the motor vehicle fund.

Passed the House January 16, 1998.

Passed the Senate March 5, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

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## CHAPTER 173

[Substitute House Bill 2166]

### COORDINATING TRANSPORTATION SERVICES

AN ACT Relating to barriers to coordinated transportation services; amending RCW 81.66.030; and adding a new chapter to Title 47 RCW.

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

**NEW SECTION.** Sec. 1. The legislature finds that transportation systems for persons with special needs are not operated as efficiently as possible. Lack of coordination produces irrational situations, such as several different vehicles arriving simultaneously at the same location to pick up several different persons with special needs. When separate vehicles arrive within minutes of each other to transport individuals with special needs to similar destinations, resources are wasted and fewer people are being served. In some cases, programs established by the legislature to assist persons with special needs can not be accessed due to these inefficiencies.

It is the intent of the legislature that public transportation agencies, private nonprofit transportation providers, and other public agencies sponsoring programs that require transportation services coordinate those transportation services. Through coordination of transportation services, programs will achieve increased efficiencies and will expand services to a greater number of persons with special needs.

**NEW SECTION. Sec. 2.** (1) The agency council on coordinated transportation is created. The council is composed of nine voting members and eight nonvoting, legislative members.

(2) The nine voting members are the superintendent of public instruction or a designee, the secretary of transportation or a designee, the secretary of the department of social and health services or a designee, and six members appointed by the governor as follows:

- (a) One representative from the office of the governor;
- (b) Two persons who are consumers of special needs transportation services;
- (c) One representative from the Washington association of pupil transportation;
- (d) One representative from the Washington state transit association; and
- (e) One of the following:
  - (i) A representative from the community transportation association of the Northwest; or
  - (ii) A representative from the community action council association.

(3) The eight nonvoting members are legislators as follows:

(a) Four members from the house of representatives, two from each of the two largest caucuses, appointed by the speaker of the house of representatives, two who are members of the house transportation policy and budget committee and two who are members of the house appropriations committee; and

(b) Four members from the senate, two from each of the two largest caucuses, appointed by the president of the senate, two members of the transportation committee and two members of the ways and means committee.

(4) Gubernatorial appointees of the council will serve two-year terms. Members may not receive compensation for their service on the council, but will be reimbursed for actual and necessary expenses incurred in performing their duties as members as set forth in RCW 43.03.220.

(5) The secretary of transportation or a designee shall serve as the chair.

(6) The department of transportation shall provide necessary staff support for the council.

(7) The council may receive gifts, grants, or endowments from public or private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of the council and spend gifts, grants, or endowments or income from the public or private sources according to their terms, unless the receipt of the gifts, grants, or endowments violates RCW 42.17.710.

**NEW SECTION. Sec. 3.** The council shall:

(1) Develop standards and strategies for coordinating special needs transportation;

(2) Identify and develop, fund as resources are made available, and monitor coordinated transportation pilot projects;

(3) Disseminate and encourage the widespread implementation of successful demonstration projects;

- (4) Identify and address barriers to transportation coordination;
- (5) Recommend to the legislature changes in law to assist coordination of transportation services;
- (6) Act as an information clearinghouse and advocate for coordinated transportation;
- (7) Petition the office of financial management to make whatever changes are deemed necessary to identify transportation costs in all executive agency budgets;
- (8) Report to the legislature by December 1, 1998, on council activities including, but not limited to, what demonstration projects have been undertaken, how coordination affected service levels, and whether these efforts produced savings that allowed expansion of services. Reports must be made once every two years thereafter, and other times as the council deems necessary.

**Sec. 4.** RCW 81.66.030 and 1979 c 111 s 6 are each amended to read as follows:

The commission shall regulate every private, nonprofit transportation provider in this state but has authority only as follows: To issue certificates to such providers; to set forth insurance requirements; to adopt reasonable rules to insure that any vehicles used by such providers will be adequate for the proposed service; and to inspect the vehicles and otherwise regulate the safety of operations of each provider(~~and to regulate in accordance with the procedures set forth in chapter 81.04 RCW any rates, fares, or charges proposed by such providers~~). The commission may charge fees to private, nonprofit transportation providers, which shall be approximately the same as the reasonable cost of regulating such providers.

**NEW SECTION.** Sec. 5. Sections 1 through 3, 6, and 7 of this act constitute a new chapter in Title 47 RCW.

**NEW SECTION.** Sec. 6. The agency council on coordinated transportation is terminated on June 30, 2003, as provided in section 7 of this act.

**NEW SECTION.** Sec. 7. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2004:

- (1) RCW 47.--.--- and 1998 c . . . s 1 (section 1 of this act);
- (2) RCW 47.--.--- and 1998 c . . . s 2 (section 2 of this act); and
- (3) RCW 47.--.--- and 1998 c . . . s 3 (section 3 of this act).

Passed the House March 9, 1998.

Passed the Senate March 5, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.



**CHAPTER 174**

[House Bill 2598]

**PROPERTY TAX EXEMPTIONS FOR RENTALS OR LEASES BY  
NONPROFIT ORGANIZATIONS**

AN ACT Relating to property tax exemptions for nonprofit organizations; and amending RCW 84.36.043.

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

**Sec. 1.** RCW 84.36.043 and 1991 c 198 s 1 are each amended to read as follows:

(1) The real and personal property used by a nonprofit organization in providing emergency or transitional housing for low-income homeless persons as defined in RCW 35.21.685 or 36.32.415 or victims of domestic violence who are homeless for personal safety reasons is exempt from taxation if:

(a) The charge, if any, for the housing does not exceed the actual cost of operating and maintaining the housing; and

(b)(i) The property is owned by the nonprofit organization; or

(ii) ~~((For taxes levied for collection in 1991 through 1999 only,))~~ The property is rented or leased by the nonprofit organization and the benefit of the exemption inures to the nonprofit organization.

(2) As used in this section:

(a) "Homeless" means persons, including families, who, on one particular day or night, do not have decent and safe shelter nor sufficient funds to purchase or rent a place to stay.

(b) "Emergency housing" means a project that provides housing and supportive services to homeless persons or families for up to sixty days.

(c) "Transitional housing" means a project that provides housing and supportive services to homeless persons or families for up to two years and that has as its purpose facilitating the movement of homeless persons and families into independent living.

(3) This exemption is subject to the administrative provisions contained in RCW 84.36.800 through 84.36.865.

Passed the House February 13, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

**CHAPTER 175**

[Engrossed Substitute House Bill 2615]

**PARTNERSHIPS FOR STRATEGIC FREIGHT INVESTMENTS—  
FREIGHT MOBILITY STRATEGIC INVESTMENT BOARD**

AN ACT Relating to creating partnerships for strategic freight investments; amending RCW 47.05.051; adding a new section to chapter 47.06 RCW; adding a new chapter to Title 47 RCW; and making an appropriation.

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

**NEW SECTION. Sec. I.** The legislature finds that:

(1) Washington state is uniquely positioned as a gateway to the global economy. As the most trade-dependent state in the nation, per capita, Washington's economy is highly dependent on an efficient multimodal transportation network in order to remain competitive.

(2) The vitality of the state's economy is placed at risk by growing traffic congestion that impedes the safe and efficient movement of goods. The absence of a comprehensive and coordinated state policy that facilitates freight movements to local, national, and international markets limits trade opportunities.

(3) Freight corridors that serve international and domestic interstate and intrastate trade, and those freight corridors that enhance the state's competitive position through regional and global gateways are strategically important. In many instances, movement of freight on these corridors is diminished by: Barriers that block or delay access to intermodal facilities where freight is transferred from one mode of transport to another; conflicts between rail and road traffic; constraints on rail capacity; highway capacity constraints, congestion, and condition; waterway system depths that affect capacity; and institutional, regulatory, and operational barriers.

(4) Rapidly escalating population growth is placing an added burden on streets, roads, and highways that serve as freight corridors. Community benefits from economic activity associated with freight movement often conflict with community concerns over safety, mobility, environmental quality. Efforts to minimize community impacts in areas of high freight movements that encourage the active participation of communities in the early stages of proposed public and private infrastructure investments will facilitate needed freight mobility improvements.

(5) Ownership of the freight mobility network is fragmented and spread across various public jurisdictions, private companies, and state and national borders. Transportation projects have grown in complexity and size, requiring more resources and longer implementation time frames. Currently, there is no comprehensive and integrated framework for planning the freight mobility needs of public and private stakeholders in the freight transportation system. A coordinated planning process should identify new infrastructure investments that are integrated by public and private planning bodies into a multimodal and multijurisdictional network in all areas of the state, urban and rural, east and west. The state should integrate freight mobility goals with state policy on related issues such as economic development, growth management, and environmental management.

(6) State investment in projects that enhance or mitigate freight movements, should pay special attention to solutions that utilize a corridor solution to address freight mobility issues with important transportation and economic impacts

beyond any local area. The corridor approach builds partnerships and fosters coordinated planning among jurisdictions and the public and private sectors.

(7) It is the policy of the state of Washington that limited public transportation funding and competition between freight and general mobility improvements for the same fund sources require strategic, prioritized freight investments that reduce barriers to freight movement, maximize cost-effectiveness, yield a return on the state's investment, require complementary investments by public and private interests, and solve regional freight mobility problems. State financial assistance for freight mobility projects must leverage other funds from all potential partners and sources, including federal, county, city, port district, and private capital.

**NEW SECTION. Sec. 2.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the freight mobility strategic investment board created in section 4 of this act.

(2) "Department" means the department of transportation.

(3) "Freight mobility" means the safe, reliable, and efficient movement of goods within and through the state to ensure the state's economic vitality.

(4) "Local governments" means cities, towns, counties, special purpose districts, port districts, and any other municipal corporations or quasi-municipal corporations in the state excluding school districts.

(5) "Public entity" means a state agency, city, town, county, port district, or municipal or regional planning organization.

(6) "Strategic freight corridor" means a transportation corridor of great economic importance within an integrated freight system that:

(a) Serves international and domestic interstate and intrastate trade;

(b) Enhances the state's competitive position through regional and global gateways;

(c) Carries freight tonnages of at least:

(i) Four million gross tons annually on state highways, city streets, and county roads;

(ii) Five million gross tons annually on railroads; or

(iii) Two and one-half million net tons on waterways; and

(d) Has been designated a strategic corridor by the board under section 3(3) of this act. However, new alignments to, realignments of, and new links to strategic corridors that enhance freight movement may qualify, even though no tonnage data exists for facilities to be built in the future.

**NEW SECTION. Sec. 3.** (1) The board shall:

(a) Adopt rules and procedures necessary to implement the freight mobility strategic investment program;

(b) Solicit from public entities proposed projects that meet eligibility criteria established in accordance with subsection (4) of this section; and

(c) Review and evaluate project applications based on criteria established under this section, and prioritize and select projects comprising a portfolio to be funded in part with grants from state funds appropriated for the freight mobility strategic investment program. In determining the appropriate level of state funding for a project, the board shall ensure that state funds are allocated to leverage the greatest amount of partnership funding possible. After selecting projects comprising the portfolio, the board shall submit them as its budget request to the office of financial management and the legislature. The board shall ensure that projects submitted as part of the portfolio are not more appropriately funded with other federal, state, or local government funding mechanisms or programs. The board shall reject those projects that appear to improve overall general mobility with limited enhancement for freight mobility.

The board shall provide periodic progress reports to the governor and the legislative transportation committee.

(2) The board may:

(a) Accept from any state or federal agency, loans or grants for the financing of any transportation project and enter into agreements with any such agency concerning the loans or grants;

(b) Provide technical assistance to project applicants;

(c) Accept any gifts, grants, or loans of funds, property, or financial, or other aid in any form from any other source on any terms and conditions which are not in conflict with this chapter;

(d) Adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of this chapter; and

(e) Do all things necessary or convenient to carry out the powers expressly granted or implied under this chapter.

(3) The board shall designate strategic freight corridors within the state. The board shall update the list of designated strategic corridors not less than every two years, and shall establish a method of collecting and verifying data, including information on city and county-owned roadways.

(4) From the effective date of this act through the biennium ending June 30, 2001, the board shall utilize threshold project eligibility criteria that, at a minimum, includes the following:

(a) The project must be on a strategic freight corridor;

(b) The project must meet one of the following conditions:

(i) It is primarily aimed at reducing identified barriers to freight movement with only incidental benefits to general or personal mobility; or

(ii) It is primarily aimed at increasing capacity for the movement of freight with only incidental benefits to general or personal mobility; or

(iii) It is primarily aimed at mitigating the impact on communities of increasing freight movement, including roadway/railway conflicts; and

(c) The project must have a total public benefit/total public cost ratio of equal to or greater than one.

(5) From the effective date of this act through the biennium ending June 30, 2001, the board shall use the multicriteria analysis and scoring framework for evaluating and ranking eligible freight mobility and freight mitigation projects developed by the freight mobility project prioritization committee and contained in the January 16, 1998, report entitled "Project Eligibility, Priority and Selection Process for a Strategic Freight Investment Program." The prioritization process shall measure the degree to which projects address important program objectives and shall generate a project score that reflects a project's priority compared to other projects. The board shall assign scoring points to each criterion that indicate the relative importance of the criterion in the overall determination of project priority. After June 30, 2001, the board may supplement and refine the initial project priority criteria and scoring framework developed by the freight mobility project prioritization committee as expertise and experience is gained in administering the freight mobility program.

(6) It is the intent of the legislature that each freight mobility project contained in the project portfolio submitted by the board utilize the greatest amount of nonstate funding possible. The board shall adopt rules that give preference to projects that contain the greatest levels of financial participation from nonprogram fund sources. The board shall consider twenty percent as the minimum partnership contribution, but shall also ensure that there are provisions allowing exceptions for projects that are located in areas where minimal local funding capacity exists or where the magnitude of the project makes the adopted partnership contribution financially unfeasible.

(7) The board shall develop and recommend policies that address operational improvements that primarily benefit and enhance freight movement, including, but not limited to, policies that reduce congestion in truck lanes at border crossings and weigh stations and provide for access to ports during nonpeak hours.

**NEW SECTION. Sec. 4.** (1) The freight mobility strategic investment board is created. The board shall convene by July 1, 1998.

(2) The board is composed of twelve members. The following members are appointed by the governor for terms of four years, except that five members initially are appointed for terms of two years: (a) Two members, one of whom is from a city located within or along a strategic freight corridor, appointed from a list of at least four persons nominated by the association of Washington cities or its successor; (b) two members, one of whom is from a county having a strategic freight corridor within its boundaries, appointed from a list of at least four persons nominated by the Washington state association of counties or its successor; (c) two members, one of whom is from a port district located within or along a strategic freight corridor, appointed from a list of at least four persons nominated by the Washington public ports association or its successor; (d) one member representing the office of financial management; (e) one member appointed as a representative of the trucking industry; (f) one member appointed as a representative of the railroads; (g) the secretary of the department of transportation; (h) one member representing the steamship industry; and (i) one

member of the general public. In appointing the general public member, the governor shall endeavor to appoint a member with special expertise in relevant fields such as public finance, freight transportation, or public works construction. The governor shall appoint the general public member as chair of the board. In making appointments to the board, the governor shall ensure that each geographic region of the state is represented.

(3) Members of the board may not receive compensation. Reimbursement for travel and other expenses shall be provided by each respective organization that a member represents on the board.

(4) If a vacancy on the board occurs by death, resignation, or otherwise, the governor shall fill the vacant position for the unexpired term. Each vacancy in a position appointed from lists provided by the associations and departments under subsection (2) of this section must be filled from a list of at least four persons nominated by the relevant association or associations.

(5) The appointments made in subsection (2) of this section are not subject to confirmation.

**NEW SECTION. Sec. 5.** The board shall appoint an executive director, who shall serve at its pleasure and whose salary shall be set by the board. Staff support to the board shall initially be provided by the department of transportation, the transportation improvement board, and the county road administration board or their successor agencies. The board shall develop a plan that provides for administration and staffing of the program and present this plan to the office of financial management and the legislative transportation committee by December 31, 1998.

**NEW SECTION. Sec. 6.** (1) For the purpose of allocating funds for the freight mobility strategic investment program, the board shall allocate the first fifty-five percent of funds to the highest priority projects, without regard to location.

(2) The remaining funds shall be allocated equally among three regions of the state, defined as follows:

(a) The Puget Sound region includes King, Pierce, and Snohomish counties;

(b) The western Washington region includes Clallum, Jefferson, Island, Kitsap, San Juan, Skagit, Whatcom, Clark, Cowlitz, Grays Harbor, Lewis, Mason, Pacific, Skamania, Thurston, and Wahkiakum counties; and

(c) The eastern Washington region includes Adams, Chelan, Douglas, Ferry, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Whitman, Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Klickitat, Walla Walla, and Yakima counties.

(3) If a region does not have enough qualifying projects to utilize its allocation of funds, the funds will be made available to the next highest priority project, without regard to location.

(4) In the event that a proposal contains projects in more than one region, for purposes of assuring that equitable geographic distributions are made under

subsection (2) of this section, the board shall evaluate the proposal and proportionally assign the benefits that are attributable to each region.

(5) If the board identifies a project for funding, but later determines that the project is not ready to proceed at the time the legislature's funding decision is pending, the board shall recommend removing the project from consideration and the next highest priority project shall be substituted in the project portfolio. Any project removed from funding consideration because it is not ready to proceed shall retain its position on the priority project list and is eligible to be recommended for funding in the next project portfolio submitted by the board.

**NEW SECTION.** Sec. 7. In order to aid the financing of eligible freight mobility projects, the board may:

(1) Make grants or loans from funds appropriated for the freight mobility strategic investment program for the purpose of financing freight mobility projects. The board may require terms and conditions as it deems necessary or convenient to carry out the purposes of this chapter.

(2) The state shall not bear the financial burden for project costs unrelated to the movement of freight. Project amenities unrelated to the movement of freight may not be submitted to the board as part of a project proposal under the freight mobility strategic investment program.

(3) All freight mobility projects aided in whole or in part under this chapter must have a public entity designated as the lead project proponent.

**NEW SECTION.** Sec. 8. The board shall keep proper records and shall be subject to audit by the state auditor.

**NEW SECTION.** Sec. 9. Port districts in the state shall submit their development plans to the relevant regional transportation planning organization or metropolitan planning organization, the department, and affected cities and counties to better coordinate the development and funding of freight mobility projects.

**NEW SECTION.** Sec. 10. A new section is added to chapter 47.06 RCW to read as follows:

The state-interest component of the state-wide multimodal transportation plan shall include a freight mobility plan which shall assess the transportation needs to ensure the safe, reliable, and efficient movement of goods within and through the state and to ensure the state's economic vitality.

***\*NEW SECTION. Sec. 11. In order to encourage joint transportation planning activities proximate to international borders, the department shall make incentive grants to metropolitan and regional transportation planning organizations that share a common border with Canada. As a condition of receiving a grant under this section, the planning organization shall assure the department that it commits to be engaged in joint planning with its counterpart agency in Canada. Such grants shall be used to develop project plans and implement coordinated and comprehensive projects to improve the safe***

*movement of people and goods at or across the boarder. Grants shall be made on the basis of:*

*(1) Expected reduction in commercial and other travel time through a major international gateway as a result of the project;*

*(2) Leveraging of federal funds provided, including use of innovative financing, in combination with other sources of federal, state, local, and private funding;*

*(3) Improvements in vehicle and highway safety and cargo security in and through the gateway;*

*(4) Degree of binational involvement in the project, and demonstrated coordination with other federal agencies responsible for inspection of vehicles, cargo, and persons crossing international borders, and their counterpart agencies in Canada;*

*(5) Demonstrated local commitment to implement and sustain continuing comprehensive border planning processes; and*

*(6) Improved use of existing and underutilized border crossing facilities and approaches.*

\*Sec. 11 was vetoed. See message at end of chapter.

**Sec. 12.** RCW 47.05.051 and 1993 c 490 s 5 are each amended to read as follows:

The comprehensive six-year investment program shall be based upon the needs identified in the state-owned highway component of the state-wide multimodal transportation plan as defined in RCW 47.01.071(3) and priority selection systems that incorporate the following criteria:

(1) Priority programming for the preservation program shall take into account the following, not necessarily in order of importance:

(a) Extending the service life of the existing highway system;

(b) Ensuring the structural ability to carry loads imposed upon highways and bridges; and

(c) Minimizing life cycle costs. The transportation commission in carrying out the provisions of this section may delegate to the department of transportation the authority to select preservation projects to be included in the six-year program.

(2) Priority programming for the improvement program shall take into account the following:

(a) Support for the state's economy, including job creation and job preservation;

(b) The cost-effective movement of people and goods;

(c) Accident and accident risk reduction;

(d) Protection of the state's natural environment;

(e) Continuity and systematic development of the highway transportation network;

(f) Consistency with local comprehensive plans developed under chapter 36.70A RCW;



(g) Consistency with regional transportation plans developed under chapter 47.80 RCW;

(h) Public views concerning proposed improvements;

(i) The conservation of energy resources;

(j) Feasibility of financing the full proposed improvement;

(k) Commitments established in previous legislative sessions;

(l) Relative costs and benefits of candidate programs;

(m) Major projects addressing capacity deficiencies which prioritize allowing for preliminary engineering shall be reprioritized during the succeeding biennium, based upon updated project data. Reprioritized projects may be delayed or canceled by the transportation commission if higher priority projects are awaiting funding; and

(n) Major project approvals which significantly increase a project's scope or cost from original prioritization estimates shall include a review of the project's estimated revised priority rank and the level of funding provided. Projects may be delayed or canceled by the transportation commission if higher priority projects are awaiting funding.

(3) The commission may depart from the priority programming established under subsections (1) and (2) of this section: (a) To the extent that otherwise funds cannot be utilized feasibly within the program; (b) as may be required by a court judgment, legally binding agreement, or state and federal laws and regulations; (c) as may be required to coordinate with federal, local, or other state agency construction projects; (d) to take advantage of some substantial financial benefit that may be available; (e) for continuity of route development; or (f) because of changed financial or physical conditions of an unforeseen or emergent nature. The commission or secretary of transportation shall maintain in its files information sufficient to show the extent to which the commission has departed from the established priority.

(4) The commission shall identify those projects that yield freight mobility benefits or that alleviate the impacts of freight mobility upon affected communities.

***\*NEW SECTION. Sec. 13. The governor shall take the steps necessary to ensure that this act is implemented on its effective date and that the freight mobility strategic investment board convenes by July 1, 1998.***

\*Sec. 13 was vetoed. See message at end of chapter.

***\*NEW SECTION. Sec. 14. In order to facilitate freight mobility, the sum of twenty-five million dollars is appropriated for the biennium ending June 30, 1999, from the motor vehicle fund—state to the department of transportation improvement program for highway construction projects as determined by the transportation commission. If section 43 of Engrossed House Bill No. 2894 is not enacted by June 30, 1998, this section is null and void.***

\*Sec. 14 was vetoed. See message at end of chapter.

NEW SECTION. **Sec. 15.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 16.** Sections 1 through 9, 11, and 13 of this act constitute a new chapter in Title 47 RCW.

Passed the House March 12, 1998.

Passed the Senate March 12, 1998.

Approved by the Governor March 27, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 27, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 11, 13 and 14, Engrossed Substitute House Bill No. 2615 entitled:

"AN ACT Relating to creating partnerships for strategic freight investments;"

ESHB 2615 creates a Freight Mobility Strategic Investment Board to administer grants, targeted at improving freight mobility. This bill is an important step toward solving our state's transportation bottlenecks; however, some sections of the bill are problematic.

Section 11 of ESHB 2615 would require the Department of Transportation (DOT) to make incentive grants to metropolitan planning and regional transportation planning organizations that border Canada, to encourage joint transportation planning activities. While I appreciate the strategic importance of international freight corridors, this section would give superior status to border crossing projects. Section 3 of the bill establishes a level playing field which will allow all freight projects, including those along the Canadian border, to compete for funding on equal terms. Granting priority status for border crossing projects in this instance is not warranted.

Section 13 of ESHB 2615 would require the Governor to personally ensure that this act is "implemented" on its effective date and that the Freight Mobility Strategic Investment Board convenes by July 1, 1998. Section 4 of the bill already requires that the Board convene by that date. Also, I understand that it is unlikely that the Board will be able to adopt all of its rules within 90 days of the Legislature's adjournment. While I am certainly committed to the rapid, yet thoughtful implementation of this act, the meaning of "implemented" as it appears in this section is very ambiguous and could have unanticipated consequences.

Section 14 of ESHB 2615 would provide that a \$25 million loan from the state general fund to the motor vehicle fund, as provided in ESHB 2894, be used to facilitate freight mobility, but in a very limited way. It would limit the loan's use to only highway construction projects in DOT's highway improvement program. As distinguished from DOT's current highway improvement program, ESHB 2615 is focused legislation intended to create a targeted freight mobility program with the aim of reducing barriers to freight movement with only incidental benefits to general mobility. Linking this money to the highway improvement program is inconsistent with the primary intent of this bill.

For these reasons, I have vetoed sections 11, 13 and 14 of Engrossed Substitute House Bill No. 2615.

With the exceptions of sections 11, 13 and 14, Engrossed Substitute House Bill No. 2615 is approved."

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## CHAPTER 176

[Substitute House Bill 2659]

### SPECIAL FUEL AND MOTOR VEHICLE FUEL TAXES—REVISIONS

AN ACT Relating to special fuel and motor vehicle fuel taxes; amending RCW 35A.82.010, 82.04.4285, 82.36.020, 82.36.032, 82.36.045, 82.36.047, 82.36.060, 82.36.070, 82.36.080, 82.36.090,

82.36.100, 82.36.120, 82.36.130, 82.36.140, 82.36.150, 82.36.160, 82.36.170, 82.36.180, 82.36.190, 82.36.200, 82.36.210, 82.36.230, 82.36.280, 82.36.300, 82.36.310, 82.36.330, 82.36.335, 82.36.350, 82.36.370, 82.36.375, 82.36.390, 82.36.400, 82.38.020, 82.38.030, 82.38.070, 82.38.080, 82.38.090, 82.38.100, 82.38.110, 82.38.120, 82.38.130, 82.38.150, 82.38.160, 82.38.170, 82.38.180, 82.38.190, 82.38.210, 82.38.220, 82.38.230, 82.38.235, 82.38.240, 82.38.260, 43.05.110, 82.47.010, and 82.80.010; reenacting and amending RCW 82.08.0255, 82.12.0256, 82.36.010, and 82.38.140; adding new sections to chapter 82.36 RCW; adding new sections to chapter 82.38 RCW; creating new sections; repealing RCW 82.36.030, 82.36.038, 82.36.220, 82.38.040, 82.38.082, and 82.38.086; prescribing penalties; and providing an effective date.

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

**NEW SECTION. Sec. 1.** The legislature finds and declares that:

(1) The health, safety, and welfare of the people of the state of Washington are dependent on the state's ability to properly collect the taxes enacted by the legislature;

(2) The current system for collecting special fuel taxes and motor vehicle fuel tax has allowed many parties to fraudulently evade paying the special fuel taxes and motor vehicle fuel tax due the state; and

(3) By changing the point of collection of the special fuel taxes and motor vehicle fuel tax from distributors to suppliers, the department of licensing will have fewer parties to collect tax from and enforcement will be enhanced, thus leading to greater revenues for the state.

**Sec. 2.** RCW 35A.82.010 and 1995 c 274 s 4 are each amended to read as follows:

A code city shall collect, receive and share in the distribution of state collected and distributed excise taxes to the same extent and manner as general laws relating thereto apply to any class of city or town including, but not limited to, funds distributed to cities under RCW 82.36.020 relating to motor vehicle fuel tax, RCW 82.38.290 relating to use fuel tax, and RCW 82.36.275 and 82.38.080(~~((9))~~) (3).

**Sec. 3.** RCW 82.04.4285 and 1980 c 37 s 6 are each amended to read as follows:

In computing tax there may be deducted from the measure of tax so much of the sale price of motor vehicle fuel as constitutes the amount of tax imposed by the state under chapters 82.36 and 82.38 RCW or the United States government, under 26 U.S.C., Subtitle D, chapters 31 and 32, upon the sale thereof.

**Sec. 4.** RCW 82.08.0255 and 1983 1st ex.s. c 35 s 2 and 1983 c 108 s 1 are each reenacted and amended to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales of:

(a) Motor vehicle fuel used in aircraft by the manufacturer thereof for research, development, and testing purposes; and

(b) Motor vehicle and special fuel if:

(i) The fuel is purchased for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(~~((9))~~) (3); or

(ii) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.36.285 or 82.38.080(~~((8))~~) (1)(h); or

(iii) The fuel is taxable under chapter 82.36 or 82.38 RCW.

(2) Any person who has paid the tax imposed by RCW 82.08.020 on the sale of special fuel delivered in this state shall be entitled to a credit or refund of such tax with respect to fuel subsequently established to have been actually transported and used outside this state by persons engaged in interstate commerce. The tax shall be claimed as a credit or refunded through the tax reports required under RCW 82.38.150.

Sec. 5. RCW 82.12.0256 and 1983 1st ex.s. c 35 s 3 and 1983 c 108 s 2 are each reenacted and amended to read as follows:

The provisions of this chapter shall not apply in respect to the use of:

(1) Motor vehicle fuel used in aircraft by the manufacturer thereof for research, development, and testing purposes; and

(2) Special fuel purchased in this state upon which a refund is obtained as provided in RCW 82.38.180(2); and

(3) Motor vehicle and special fuel if:

(a) The fuel is used for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(~~((9))~~) (3); or

(b) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.36.285 or 82.38.080(~~((8))~~) (1)(h); or

(c) The fuel is taxable under chapter 82.36 or 82.38 RCW: PROVIDED, That the use of motor vehicle and special fuel upon which a refund of the applicable fuel tax is obtained shall not be exempt under this subsection (3)(c), and the director of licensing shall deduct from the amount of such tax to be refunded the amount of tax due under this chapter and remit the same each month to the department of revenue.

Sec. 6. RCW 82.36.010 and 1995 c 287 s 1 and 1995 c 274 s 20 are each reenacted and amended to read as follows:

~~((For the purposes of this chapter:~~

~~(1) "Motor vehicle" means every vehicle that is in itself a self-propelled unit, equipped with solid rubber, hollow-cushion rubber, or pneumatic rubber tires and capable of being moved or operated upon a public highway, except motor vehicles used as motive power for or in conjunction with farm implements and machines or implements of husbandry;~~

~~(2) "Motor vehicle fuel" means gasoline or any other inflammable gas or liquid, by whatsoever name such gasoline, gas, or liquid may be known or sold; the chief use of which is as fuel for the propulsion of motor vehicles or motorboats;~~

- (3) "Distributor" means every person who refines, manufactures, produces, or compounds motor vehicle fuel and sells, distributes, or in any manner uses it in this state; also every person engaged in business as a bona fide wholesale merchant dealing in motor vehicle fuel who either acquires it within the state from any person refining it within or importing it into the state, on which the tax has not been paid, or imports it into this state and sells, distributes, or in any manner uses it in this state; also every person who acquires motor vehicle fuel, on which the tax has not been paid, and exports it by commercial motor vehicle to a location outside the state. For the purposes of liability for a county fuel tax, "distributor" has that meaning defined in the county ordinance imposing the tax. For the purposes of this subsection, "commercial motor vehicle" means any motor vehicle used, designed, or maintained for transportation of persons or property and: (a) Having two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds; or (b) having three or more axles regardless of weight; or (c) is used in combination, when the weight of such combination exceeds twenty-six thousand pounds gross vehicle weight. "Commercial motor vehicle" does not include recreational vehicles;
- (4) "Service station" means a place operated for the purpose of delivering motor vehicle fuel into the fuel tanks of motor vehicles;
- (5) "Department" means the department of licensing;
- (6) "Director" means the director of licensing;
- (7) "Dealer" means any person engaged in the retail sale of liquid motor vehicle fuels;
- (8) "Person" means every natural person, firm, partnership, association, or private or public corporation;
- (9) "Highway" means every way or place open to the use of the public, as a matter of right, for purposes of vehicular travel;
- (10) "Broker" means every person, other than a distributor, engaged in business as a broker, jobber, or wholesale merchant dealing in motor vehicle fuel or other petroleum products used or usable in propelling motor vehicles, or in other petroleum products which may be used in blending, compounding, or manufacturing of motor vehicle fuel;
- (11) "Producer" means every person, other than a distributor, engaged in the business of producing motor vehicle fuel or other petroleum products used in, or which may be used in, the blending, compounding, or manufacturing of motor vehicle fuel;
- (12) "Distribution" means all withdrawals of motor vehicle fuel for delivery to others, to retail service stations, or to unlicensed bulk storage plants;
- (13) "Bulk storage plant" means, pursuant to the licensing provisions of RCW 82.36.070, any plant, under the control of the distributor, used for the storage of motor vehicle fuel to which no retail outlets are directly connected by pipe lines;
- (14) "Marine fuel dealer" means any person engaged in the retail sale of liquid motor vehicle fuel whose place of business and or sale outlet is located upon a navigable waterway;

— (15) "Alcohol" means alcohol that is produced from renewable resources;

— (16) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account;

— (17) "Evasion" or "evade" means to diminish or avoid the computation, assessment, or payment of authorized taxes or fees through:

— (a) A knowing: False statement, misrepresentation of fact, or other act of deception; or

— (b) An intentional: Omission, failure to file a return or report, or other act of deception.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Blended fuel" means a mixture of motor vehicle fuel and another liquid, other than a de minimus amount of the liquid, that can be used as a fuel to propel a motor vehicle.

(2) "Bond" means a bond duly executed with a corporate surety qualified under chapter 48.28 RCW, which bond is payable to the state of Washington conditioned upon faithful performance of all requirements of this chapter, including the payment of all taxes, penalties, and other obligations arising out of this chapter.

(3) "Bulk transfer" means a transfer of motor vehicle fuel by pipeline or vessel.

(4) "Bulk transfer-terminal system" means the motor vehicle fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Motor vehicle fuel in a refinery, pipeline, vessel, or terminal is in the bulk transfer-terminal system. Motor vehicle fuel in the fuel tank of an engine, motor vehicle, or in a railcar, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer-terminal system.

(5) "Dealer" means a person engaged in the retail sale of motor vehicle fuel.

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

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

(8) "Evasion" or "evade" means to diminish or avoid the computation, assessment, or payment of authorized taxes or fees through:

(a) A knowing: False statement; misrepresentation of fact; or other act of deception; or

(b) An intentional: Omission; failure to file a return or report; or other act of deception.

(9) "Export" means to obtain motor vehicle fuel in this state for sales or distribution outside the state.

(10) "Highway" means every way or place open to the use of the public, as a matter of right, for the purpose of vehicular travel.

(11) "Import" means to bring motor vehicle fuel into this state by a means of conveyance other than the fuel supply tank of a motor vehicle.

(12) "Licensee" means a person holding a license issued under this chapter.

(13) "Marine fuel dealer" means a person engaged in the retail sale of motor vehicle fuel whose place of business and/or sale outlet is located upon a navigable waterway.

(14) "Motor vehicle fuel blender" means a person who produces blended motor fuel outside the bulk transfer-terminal system.

(15) "Motor vehicle fuel distributor" means a person who acquires motor vehicle fuel from a supplier, distributor, or licensee for subsequent sale and distribution.

(16) "Motor vehicle fuel exporter" means a person who purchases motor vehicle fuel in this state and directly exports the fuel by a means other than the bulk transfer-terminal system to a destination outside of the state. If the exporter of record is acting as an agent, the person for whom the agent is acting is the exporter. If there is no exporter of record, the owner of the motor fuel at the time of exportation is the exporter.

(17) "Motor vehicle fuel importer" means a person who imports motor vehicle fuel into the state by a means other than the bulk transfer-terminal system. If the importer of record is acting as an agent, the person for whom the agent is acting is the importer. If there is no importer of record, the owner of the motor vehicle fuel at the time of importation is the importer.

(18) "Motor vehicle fuel supplier" means a person who owns and stores motor vehicle fuel in a terminal facility or who refines and stores motor vehicle fuel at a refinery.

(19) "Motor vehicle" means a self-propelled vehicle designed for operation upon land utilizing motor vehicle fuel as the means of propulsion.

(20) "Motor vehicle fuel" means gasoline and any other inflammable gas or liquid, by whatsoever name the gasoline, gas, or liquid may be known or sold, the chief use of which is as fuel for the propulsion of motor vehicles or motorboats.

(21) "Person" means a natural person, fiduciary, association, or corporation. The term "person" as applied to an association means and includes the partners or members thereof, and as applied to corporations, the officers thereof.

(22) "Position holder" means a person who holds the inventory position in motor vehicle fuel, as reflected by the records of the terminal operator. A person holds the inventory position in motor vehicle fuel if the person has a contractual agreement with the terminal for the use of storage facilities and terminating services at a terminal with respect to motor vehicle fuel. "Position holder" includes a terminal operator that owns motor vehicle fuel in their terminal.

(23) "Rack" means a mechanism for delivering motor vehicle fuel from a refinery or terminal into a truck, trailer, railcar, or other means of nonbulk transfer.

(24) "Refiner" means a person who owns, operates, or otherwise controls a refinery.

(25) "Removal" means a physical transfer of motor vehicle fuel other than by evaporation, loss, or destruction.

(26) "Terminal" means a motor vehicle fuel storage and distribution facility that has been assigned a terminal control number by the internal revenue service, is supplied by pipeline or vessel, and from which reportable motor vehicle fuel is removed at a rack.

(27) "Terminal operator" means a person who owns, operates, or otherwise controls a terminal.

(28) "Two-party exchange" or "buy-sell agreement" means a transaction in which taxable motor vehicle fuel is transferred from one licensed supplier to another licensed supplier under an exchange or buy-sell agreement whereby the supplier that is the position holder agrees to deliver taxable motor vehicle fuel to the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder.

Sec. 7. RCW 82.36.020 and 1983 1st ex.s. c 49 s 26 are each amended to read as follows:

~~((Every distributor shall pay, in addition to any other taxes provided by law, an excise tax to the director at a rate computed in the manner provided in RCW 82.36.025 for each gallon of motor vehicle fuel sold, distributed, or used by him in the state as well as on each gallon upon which he has assumed liability for payment of the tax under the provisions of RCW 82.36.100: PROVIDED, That under such regulations as the director may prescribe sales or distribution of motor vehicle fuel may be made by one licensed distributor to another licensed distributor free of the tax. In the computation of the tax, one quarter of one percent of the net gallonage otherwise taxable shall be deducted by the distributor before computing the tax due, on account of the losses sustained through handling. The tax imposed hereunder shall be in addition to any other tax required by law, and shall not be imposed under circumstances in which the tax is prohibited by the Constitution or laws of the United States. The tax herein imposed shall be collected and paid to the state but once in respect to any motor vehicle fuel. An invoice shall be rendered by a distributor to a purchaser for each distribution of motor vehicle fuel:))~~

(1) There is hereby levied and imposed upon motor vehicle fuel users a tax at the rate computed in the manner provided in RCW 82.36.025 on each gallon of motor vehicle fuel.

(2) The tax imposed by subsection (1) of this section is imposed when any of the following occurs:

(a) Motor vehicle fuel is removed in this state from a terminal if the motor vehicle fuel is removed at the rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state;

(b) Motor vehicle fuel is removed in this state from a refinery if either of the following applies:

(i) The removal is by bulk transfer and the refiner or the owner of the motor vehicle fuel immediately before the removal is not a licensee; or

(ii) The removal is at the refinery rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state;



(c) Motor vehicle fuel enters into this state for sale, consumption, use, or storage if either of the following applies:

(i) The entry is by bulk transfer and the importer is not a licensee; or

(ii) The entry is not by bulk transfer;

(d) Motor vehicle fuel is removed in this state to an unlicensed entity unless there was a prior taxable removal, entry, or sale of the motor vehicle fuel;

(e) Blended motor vehicle fuel is removed or sold in this state by the blender of the fuel. The number of gallons of blended motor vehicle fuel subject to the tax is the difference between the total number of gallons of blended motor vehicle fuel removed or sold and the number of gallons of previously taxed motor vehicle fuel used to produce the blended motor vehicle fuel.

~~(3) The proceeds of the motor vehicle fuel excise tax collected ((on the net gallonage after the deduction provided for herein and))~~ after the deductions for payments and expenditures as provided in RCW 46.68.090(;) shall be distributed as provided in RCW 46.68.100.

**NEW SECTION.** Sec. 8. (1) A position holder shall remit tax to the department on motor vehicle fuel removed from a terminal as provided in RCW 82.36.020(2)(a). On a two-party exchange, or buy-sell agreement between two suppliers, the receiving exchange partner or buyer, becomes the position holder, who shall remit the tax.

(2) A refiner shall remit tax to the department on motor vehicle fuel removed from a refinery as provided in RCW 82.36.020(2)(b).

(3) An importer shall remit tax to the department on motor vehicle fuel imported into this state as provided in RCW 82.36.020(2)(c).

(4) A blender shall remit tax to the department on the removal or sale of blended motor vehicle fuel as provided in RCW 82.36.020(2)(e).

**NEW SECTION.** Sec. 9. A terminal operator is jointly and severally liable for remitting the tax imposed under RCW 82.36.020(1) if, at the time of removal:

(1) The position holder with respect to the motor vehicle fuel is a person other than the terminal operator and is not a licensee;

(2) The terminal operator is not a licensee;

(3) The position holder has an expired internal revenue service notification certificate issued under 26 C.F.R. Part 48; or

(4) The terminal operator had reason to believe that information on the notification certificate was false.

**NEW SECTION.** Sec. 10. Upon the taxable removal of motor vehicle fuel, the licensee who acquired or removed the motor vehicle fuel, other than a motor vehicle fuel exporter, shall be entitled to a deduction from the tax liability on the gallonage of taxable motor vehicle fuel removed in order to account for handling losses, as follows: For a motor vehicle fuel supplier acting as a distributor, one-quarter of one percent; and for all other licensees, thirty one-hundredths of one percent. For those licensees required to file tax reports, the handling loss deduction shall be reported on tax reports filed with the department. For motor

vehicle fuel distributors, the handling loss deduction shall be shown on the invoice provided to the motor vehicle fuel distributor by the seller.

**NEW SECTION. Sec. 11.** For the purpose of determining the amount of liability for the tax imposed under this chapter, and to periodically update license information, each licensee, other than a motor vehicle fuel distributor, shall file monthly tax reports with the department, on a form prescribed by the department.

A report shall be filed with the department even though no motor vehicle fuel tax is due for the reporting period. Each tax report shall contain a declaration by the person making the same, to the effect that the statements contained therein are true and made under penalties of perjury, which declaration has the same force and effect as a verification of the report and is in lieu of the verification. The report shall show information as the department may require for the proper administration and enforcement of this chapter. Tax reports shall be filed on or before the twenty-fifth day of the next succeeding calendar month following the period to which the reports relate. If the final filing date falls on a Saturday, Sunday, or legal holiday the next secular or business day shall be the final filing date.

The department, if it deems it necessary in order to ensure payment of the tax imposed under this chapter, or to facilitate the administration of this chapter, may require the filing of reports and tax remittances at shorter intervals than one month.

**NEW SECTION. Sec. 12. (1)** The tax imposed by this chapter shall be computed by multiplying the tax rate per gallon provided in this chapter by the number of gallons of motor vehicle fuel subject to the motor vehicle fuel tax.

(2) Except as provided in subsection (3) of this section, tax reports shall be accompanied by a remittance payable to the state treasurer covering the tax amount determined to be due for the reporting period.

(3) If the tax is paid by electronic funds transfer, the tax shall be paid on or before the tenth calendar day of the month that is the second month immediately following the reporting period. When the reporting period is May, the tax shall be paid on the last business day of June.

(4) The tax shall be paid by electronic funds transfer whenever the amount due is fifty thousand dollars or more.

(5) A motor vehicle fuel distributor shall remit tax on motor vehicle fuel purchased from a motor vehicle fuel supplier, and due to the state for that reporting period, to the motor vehicle fuel supplier.

(6) At the election of the distributor, the payment of the motor vehicle fuel tax owed on motor vehicle fuel purchased from a supplier shall be remitted to the supplier on terms agreed upon between the distributor and supplier or no later than two business days before the last business day of the following month. This election shall be subject to a condition that the distributor's remittances of all amounts of motor vehicle fuel tax due to the supplier shall be paid by electronic funds transfer. The distributor's election may be terminated by the supplier if the

distributor does not make timely payments to the supplier as required by this section. This section shall not apply if the distributor is required by the supplier to pay cash or cash equivalent for motor vehicle fuel purchases.

**Sec. 13.** RCW 82.36.032 and 1987 c 174 s 7 are each amended to read as follows:

If any ~~((distributor))~~ licensee files a fraudulent ~~((monthly-gallonage-return))~~ tax report with intent to evade the tax imposed by this chapter, there shall be added to the amount of deficiency determined by the department a penalty equal to twenty-five percent of the deficiency, in addition to all other penalties prescribed by law.

**NEW SECTION. Sec. 14.** A motor vehicle fuel supplier shall, no later than the twentieth calendar day or next state business day after the motor vehicle fuel tax is due from a motor vehicle fuel distributor under this chapter, notify the department of the failure of a motor vehicle fuel distributor to pay the full amount of the tax owed.

Upon notification and submission of satisfactory evidence by a motor vehicle fuel supplier that a motor vehicle fuel distributor has failed to pay the full amount of the tax owed, the department may suspend the license of the motor vehicle fuel distributor.

Upon the suspension, the department shall immediately notify all motor vehicle fuel suppliers that the authority of the motor vehicle fuel distributor to purchase tax-deferred motor vehicle fuel has been suspended and all subsequent purchases of motor vehicle fuel by the motor vehicle fuel distributor must be tax-paid at the time of removal.

If, after notification by the department, a motor vehicle fuel supplier continues to sell tax-deferred motor vehicle fuel to a motor vehicle fuel distributor whose license is suspended, the motor vehicle fuel supplier's license is subject to revocation or suspension under RCW 82.36.190. Furthermore, if notified of a license suspension, a motor vehicle fuel supplier is liable for any unpaid motor vehicle fuel tax owed on motor vehicle fuel sold to a suspended motor vehicle fuel distributor.

**NEW SECTION. Sec. 15.** A motor vehicle fuel supplier is entitled to a credit of the tax paid over to the department on those sales of motor vehicle fuel for which the supplier has received no consideration from or on behalf of the purchaser. The amount of the tax credit shall not exceed the amount of tax imposed by this chapter on such sales. Such credit may be taken on a tax return subsequent to the tax return on which the tax was paid over to the department. If a credit has been granted under this section, any amounts collected for application against accounts on which such a credit is based shall be reported on a subsequent tax return filed after such collection, and the amount of credit received by the supplier based upon the collected amount shall be returned to the department. In the event the credit has not been paid, the amount of the credit requested by the

supplier shall be adjusted by the department to reflect the decrease in the amount on which the claim is based.

**Sec. 16.** RCW 82.36.045 and 1996 c 104 s 2 are each amended to read as follows:

(1) If the department determines that the tax reported by a ~~((motor vehicle fuel distributor))~~ licensee is deficient, the department shall assess the deficiency on the basis of information available to it, and shall add a penalty of two percent of the amount of the deficiency.

(2) If a ~~((distributor, whether licensed or not licensed))~~ licensee, or person acting as such, fails, neglects, or refuses to file a motor vehicle fuel tax report the department shall, on the basis of information available to it, determine the tax liability of the ~~((distributor))~~ licensee or person for the period during which no report was filed. The department shall add the penalty provided in subsection (1) of this section to the tax. An assessment made by the department under this subsection or subsection (1) of this section is presumed to be correct. In any case, where the validity of the assessment is questioned, the burden is on the person who challenges the assessment to establish by a fair preponderance of evidence that it is erroneous or excessive, as the case may be.

(3) If a ~~((distributor))~~ licensee or person acting as such files a false or fraudulent report with intent to evade the tax imposed by this chapter, the department shall add to the amount of deficiency a penalty equal to twenty-five percent of the deficiency, in addition to the penalty provided in subsections (1) and (2) of this section and all other penalties prescribed by law.

(4) Motor vehicle fuel tax, penalties, and interest payable under this chapter bears interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the amount or any portion of it should have been paid until the date of payment. If a ~~((distributor))~~ licensee or person acting as such establishes by a fair preponderance of evidence that the failure to pay the amount of tax due was attributable to reasonable cause and was not intentional or willful, the department may waive the penalty. The department may waive the interest when it determines the cost of processing or collection of the interest exceeds the amount of interest due.

(5) Except in the case of a fraudulent report, neglect or refusal to make a report, or failure to pay or to pay the proper amount, the department shall assess the deficiency under subsection (1) or (2) of this section within five years from the last day of the succeeding calendar month after the reporting period for which the amount is proposed to be determined or within five years after the return is filed, whichever period expires later.

(6) Except in the case of violations of filing a false or fraudulent report, if the department deems mitigation of penalties and interest to be reasonable and in the best interest of carrying out the purpose of this chapter, it may mitigate such assessments upon whatever terms the department deems proper, giving consideration to the degree and extent of the lack of records and reporting errors.

The department may ascertain the facts regarding recordkeeping and payment penalties in lieu of more elaborate proceedings under this chapter.

(7) A ~~((distributor))~~ licensee or person acting as such against whom an assessment is made under subsection (1) or (2) of this section may petition for a reassessment within thirty days after service upon the ~~((distributor))~~ licensee of notice of the assessment. If the petition is not filed within the thirty-day period, the amount of the assessment becomes final at the expiration of that period.

If a petition for reassessment is filed within the thirty-day period, the department shall reconsider the assessment and, if the ~~((distributor))~~ petitioner has so requested in its petition, shall grant the ~~((distributor))~~ petitioner an oral hearing and give the ~~((distributor))~~ petitioner twenty days' notice of the time and place of the hearing. The department may continue the hearing from time to time. The decision of the department upon a petition for reassessment becomes final thirty days after service of notice upon the ~~((distributor))~~ petitioner.

An assessment made by the department becomes due and payable when it becomes final. If it is not paid to the department when due and payable, the department shall add a penalty of ten percent of the amount of the tax.

(8) In a suit brought to enforce the rights of the state under this chapter, the assessment showing the amount of taxes, penalties, interest, and cost unpaid to the state is prima facie evidence of the facts as shown.

(9) A notice of assessment required by this section must be served personally or by certified or registered mail. If it is served by mail, service shall be made by deposit of the notice in the United States mail, postage prepaid, addressed to the ~~((distributor))~~ respondent at the most current address furnished to the department.

(10) The tax ~~((required))~~ imposed by this chapter, if required to be collected by the seller, is held in trust by the ~~((seller))~~ licensee until paid to the department, and a ~~((seller))~~ licensee who appropriates or converts the tax collected to his or her 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 is guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to collect the tax imposed by this section, or who has collected the tax and fails to pay it to the department in the manner prescribed by this chapter, is personally liable to the state for the amount of the tax.

**Sec. 17.** RCW 82.36.047 and 1991 c 339 s 4 are each amended to read as follows:

When an assessment becomes final in accordance with this chapter, the department may file with the clerk of any county within the state a warrant in the amount of the assessment of taxes, penalties, interest, and a filing fee of five dollars. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant the name of the ~~((distributor))~~ licensee or person

mentioned in the warrant, the amount of the tax, penalties, interest, and filing fee, and the date when the warrant was filed. The aggregate amount of the warrant as docketed becomes a lien upon the title to and interest in all real and personal property of the named person against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of the clerk. The warrant so docketed is sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of a civil judgment, wholly or partially unsatisfied. The clerk of the court is entitled to a filing fee of five dollars.

Sec. 18. RCW 82.36.060 and 1996 c 104 s 3 are each amended to read as follows:

~~((Every person, before becoming a distributor or continuing in business as a distributor, shall make))~~ (1) An application ((to the department)) for a license ((authorizing the applicant to engage in business as a distributor. Applications for such licenses)) issued under this chapter shall be made to the department on forms to be furnished by the department and shall contain such information as the department deems necessary.

(2) Every application for a ((distributor's)) license must contain the following information to the extent it applies to the applicant:

~~((1))~~ (a) Proof as the department may require concerning the applicant's identity, including but not limited to his or her fingerprints or those of the officers of a corporation making the application;

~~((2))~~ (b) The applicant's form and place of organization including proof that the individual, partnership, or corporation is licensed to do business in this state;

~~((3))~~ (c) The qualification and business history of the applicant and any partner, officer, or director;

~~((4))~~ (d) The applicant's financial condition or history including a bank reference and whether the applicant or any partner, officer, or director has ever been adjudged bankrupt or has an unsatisfied judgment in a federal or state court;

~~((5))~~ (e) Whether the applicant has been adjudged guilty of a crime that directly relates to the business for which the license is sought and the time elapsed since the conviction is less than ten years, or has suffered a judgment within the preceding five years in a civil action involving fraud, misrepresentation, or conversion and in the case of a corporation or partnership, all directors, officers, or partners.

(3) An applicant for a license as a motor vehicle fuel importer must list on the application each state, province, or country from which the applicant intends to import motor vehicle fuel and, if required by the state, province, or country listed, must be licensed or registered for motor vehicle fuel tax purposes in that state, province, or country.

(4) An applicant for a license as a motor vehicle fuel exporter must list on the application each state, province, or country to which the exporter intends to export motor vehicle fuel received in this state by means of a transfer outside of the bulk transfer-terminal system and, if required by the state, province, or

country listed, must be licensed or registered for motor vehicle fuel tax purposes in that state, province, or country.

(5) An applicant for a license as a motor vehicle fuel supplier must have a federal certificate of registry that is issued under the internal revenue code and authorizes the applicant to enter into federal tax-free transactions on motor vehicle fuel in the terminal transfer system.

(6) After receipt of an application for a license, the director may conduct an investigation to determine whether the facts set forth are true. The director ~~((may))~~ shall require a fingerprint record check of the applicant through the Washington state patrol criminal identification system and the federal bureau of investigation before issuance of a license. The results of the background investigation including criminal history information may be released to authorized department personnel as the director deems necessary. The department shall charge a license holder or license applicant a fee of fifty dollars for each background investigation conducted.

An applicant who makes a false statement of a material fact on the application may be prosecuted for false swearing as defined by RCW 9A.72.010.

Before granting any license ~~((authorizing any person to engage in business as a distributor))~~ issued under this chapter, the department shall require applicant to file with the department, in such form as shall be prescribed by the department, a corporate surety bond duly executed by the applicant as principal, payable to the state and conditioned for faithful performance of all the requirements of this chapter, including the payment of all taxes, penalties, and other obligations arising out of this chapter. The total amount of the bond or bonds ~~((required of any distributor))~~ shall be fixed by the department and may be increased or reduced by the department at any time subject to the limitations herein provided. In fixing the total amount of the bond or bonds ~~((required of any distributor))~~, the department shall require a bond or bonds equivalent in total amount to twice the estimated monthly excise tax determined in such manner as the department may deem proper. If at any time the estimated excise tax to become due during the succeeding month amounts to more than fifty percent of the established bond, the department shall require additional bonds or securities to maintain the marginal ratio herein specified or shall demand excise tax payments to be made weekly or semimonthly to meet the requirements hereof.

The total amount of the bond or bonds required of any ~~((distributor))~~ licensee shall never be less than five thousand dollars nor more than ~~((fifty))~~ one hundred thousand dollars.

No recoveries on any bond or the execution of any new bond shall invalidate any bond and no revocation of any license shall effect the validity of any bond but the total recoveries under any one bond shall not exceed the amount of the bond.

In lieu of any such bond or bonds in total amount as herein fixed, a ~~((distributor))~~ licensee may deposit with the state treasurer, under such terms and conditions as the department may prescribe, a like amount of lawful money of the United States or bonds or other obligations of the United States, the state, or any

county of the state, of an actual market value not less than the amount so fixed by the department.

Any surety on a bond furnished by a ~~((distributor))~~ licensee as provided herein shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of thirty days from the date upon which such surety has lodged with the department a written request to be released and discharged, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the thirty day period. The department shall promptly, upon receiving any such request, notify the ~~((distributor))~~ licensee who furnished the bond; and unless the ~~((distributor))~~ licensee, on or before the expiration of the thirty day period, files a new bond, or makes a deposit in accordance with the requirements of this section, the department shall forthwith cancel the ~~((distributor's))~~ license. Whenever a new bond is furnished by a ~~((distributor))~~ licensee, the department shall cancel ~~((his or her))~~ the old bond as soon as the department and the attorney general are satisfied that all liability under the old bond has been fully discharged.

The department may require a ~~((distributor))~~ licensee to give a new or additional surety bond or to deposit additional securities of the character specified in this section if, in its opinion, the security of the surety bond theretofore filed by such ~~((distributor))~~ licensee, or the market value of the properties deposited as security by the ~~((distributor))~~ licensee, shall become impaired or inadequate; and upon the failure of the ~~((distributor))~~ licensee to give such new or additional surety bond or to deposit additional securities within thirty days after being requested so to do by the department, the department shall forthwith cancel his or her license.

**Sec. 19.** RCW 82.36.070 and 1996 c 104 s 4 are each amended to read as follows:

The application in proper form having been accepted for filing, the filing fee paid, and the bond or other security having been accepted and approved, the department shall issue to the applicant ~~((a))~~ the appropriate license ~~((to transact business as a distributor in the state))~~, and such license shall be valid until canceled or revoked.

The license so issued by the department shall not be assignable, and shall be valid only for the ~~((distributor))~~ person in whose name issued.

~~((The department shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all licensed distributors.))~~

Each ~~((distributor))~~ licensee shall be assigned a license number ~~((upon qualifying for a license hereunder))~~, and the department shall issue to each ~~((such))~~ licensee a license certificate which shall be displayed conspicuously ~~((by the distributor))~~ at his or her principal place of business. The department may refuse to issue or may revoke a motor vehicle fuel ~~((distributor))~~ license, to a person:



(1) Who formerly held a motor vehicle fuel ((distributor's)) license that, before the time of filing for application, has been revoked or canceled for cause;

(2) Who is a subterfuge for the real party in interest whose license has been revoked or canceled for cause;

(3) Who, as an individual licensee or officer, director, owner, or managing employee of a nonindividual licensee, has had a motor vehicle fuel ((distributor)) license revoked or canceled for cause;

(4) Who has an unsatisfied debt to the state assessed under either chapter 82.36, ((82.37,)) 82.38, 82.42, or 46.87 RCW;

(5) Who formerly held as an individual, officer, director, owner, managing employee of a nonindividual licensee, or subterfuge for a real party in interest, a license issued by the federal government or a state that allowed a person to buy or sell untaxed motor vehicle or special fuel, which license, before the time of filing for application, has been revoked for cause;

(6) Who pled guilty to or was convicted as an individual, corporate officer, director, owner, or managing employee in this or any other state or in any federal jurisdiction of a gross misdemeanor or felony crime directly related to the business or has been subject to a civil judgment involving fraud, misrepresentation, conversion, or dishonesty, notwithstanding chapter 9.96A RCW;

(7) Who misrepresented or concealed a material fact in obtaining a license or in reinstatement thereof;

(8) Who violated a statute or administrative rule regulating fuel taxation or distribution;

(9) Who failed to cooperate with the department's investigations by:

(a) Not furnishing papers or documents;

(b) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or

(c) Not responding to subpoenas issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;

(10) Who failed to comply with an order issued by the director; or

(11) Upon other sufficient cause being shown.

Before such a refusal or revocation, the department shall grant the applicant a hearing and shall give the applicant at least twenty days' written notice of the time and place of the hearing.

For the purpose of considering an application for a ((distributor's)) license issued under this chapter, the department may inspect, cause an inspection, investigate, or cause an investigation of the records of this or any other state or of the federal government to ascertain the veracity of the information on the application form and the applicant's criminal and licensing history.

The department may, in the exercise of reasonable discretion, suspend a motor vehicle ((distributor)) fuel license at any time before and pending such a hearing for unpaid taxes or reasonable cause.

Sec. 20. RCW 82.36.080 and 1961 c 15 s 82.36.080 are each amended to read as follows:

(1) It shall be unlawful for any person to ((be a distributor without first securing a license from the director)) engage in business in this state as any of the following unless the person is the holder of an uncanceled license issued by the department authorizing the person to engage in that business:

- (a) Motor vehicle fuel supplier;
- (b) Motor vehicle fuel distributor;
- (c) Motor vehicle fuel exporter;
- (d) Motor vehicle fuel importer; or
- (e) Motor vehicle fuel blender.

(2) A person engaged in more than one activity for which a license is required must have a separate license classification for each activity, but a motor vehicle fuel supplier is not required to obtain a separate license classification for any other activity for which a license is required.

(3) If any person ((becomes)) acts as a ((distributor)) licensee without first securing the license required herein the excise tax shall be immediately due and payable on account of all motor vehicle fuel distributed or used by ((him)) the person. The director shall proceed forthwith to determine from the best available sources, the amount of the tax, and ((he)) the director shall immediately assess the tax in the amount found due, together with a penalty of one hundred percent of the tax, and shall make ((his)) a certificate of such assessment and penalty. In any suit or proceeding to collect the tax or penalty, or both, such certificate shall be prima facie evidence that the person therein named is indebted to the state in the amount of the tax and penalty therein stated. Any tax or penalty so assessed may be collected in the manner prescribed in this chapter with reference to delinquency in payment of the tax or by an action at law, which the attorney general shall commence and prosecute to final determination at the request of the director. The foregoing remedies of the state shall be cumulative and no action taken pursuant to this section shall relieve any person from the penal provisions of this chapter.

Sec. 21. RCW 82.36.090 and 1967 c 153 s 2 are each amended to read as follows:

((Whenever a distributor)) A licensee who ceases to engage in business ((as a distributor)) within the state by reason of the discontinuance, sale, or transfer of ((his)) the business((-he)) shall notify the director in writing at the time the discontinuance, sale, or transfer takes effect. Such notice shall give the date of discontinuance, and, in the event of a sale or transfer of the business, the date thereof and the name and address of the purchaser or transferee thereof. All taxes, penalties, and interest under this chapter, not yet due and payable, shall become due and payable concurrently with such discontinuance, sale, or transfer, and any such ((distributor)) licensee shall make a report and pay all such taxes, interest, and penalties, and surrender to the director the license certificate theretofore issued to him or her.

If an overpayment of tax was made by the ~~((distributor)) licensee~~, prior to the discontinuance or transfer of his or her business, such overpayment may be refunded to such ~~((distributor or may be credited to the transferee of such business if such transferee qualifies as a distributor under the provisions of this chapter)) licensee~~.

**Sec. 22.** RCW 82.36.100 and 1983 1st ex.s. c 49 s 28 are each amended to read as follows:

Every person other than a ~~((distributor)) licensee~~ who acquires any motor vehicle fuel within this state upon which payment of tax is required under the provisions of this chapter, or imports such motor vehicle fuel into this state and sells, distributes, or in any manner uses it in this state shall, if the tax has not been paid, apply for a license to carry on such activities, ~~((file bond, make reports;))~~ comply with all ~~((regulations))~~ the ~~((director may prescribe in respect thereto))~~ provisions of this chapter, and pay an excise tax at the rate computed in the manner provided in RCW 82.36.025 for each gallon thereof so sold, distributed, or used during the fiscal year for which such rate is applicable ~~((in the manner provided for distributors, and the director shall issue a license to such person in the manner provided for issuance of licenses to distributors))~~. The proceeds of the tax imposed by this section shall be distributed in the manner provided for the distribution of the motor vehicle fuel excise tax in RCW 82.36.020. ~~((However, a distributor licensed under this chapter may deliver motor vehicle fuel to an importer in individual quantities of five hundred gallons or less and assume the liability for payment of the tax to this state. Under such conditions, the importer is exempt from the requirements of this section.))~~ For failure to comply with this chapter such person is subject to the same penalties imposed upon ~~((distributors)) licensee~~s. The director shall pursue against such persons the same procedure and remedies for audits, adjustments, collection, and enforcement of this chapter as is provided with respect to ~~((distributors)) licensee~~s. Nothing in this section may be construed as classifying such persons as ~~((distributors)) licensee~~s.

**Sec. 23.** RCW 82.36.120 and 1994 c 262 s 21 are each amended to read as follows:

If a ~~((distributor)) licensee~~ is delinquent in the payment of an obligation imposed under this chapter, the department may give notice of the amount of the delinquency by registered or certified mail to all persons having in their possession or under their control any credits or other personal property belonging to such ~~((distributor)) licensee~~, or owing any debts to such ~~((distributor)) licensee~~ at the time of receipt by them of such notice. Upon service, the notice and order to withhold and deliver constitutes a continuing lien on property of the taxpayer. The department shall include in the caption of the notice to withhold and deliver "continuing lien." The effective date of a notice to withhold and deliver served under this section is the date of service of the notice. A person so notified shall neither transfer nor make any other disposition of such credits, personal property, or debts until the department consents to a transfer or other disposition. All

persons so notified must, within twenty days after receipt of the notice, advise the department of any and all such credits, personal property, or debts in their possession, under their control or owing by them, as the case may be, and shall deliver upon demand the credits, personal property, or debts to the department or its duly authorized representative to be applied to the indebtedness involved.

If a person fails to answer the notice within the time prescribed by this section, it is lawful for the court, upon application of the department and after the time to answer the notice has expired, to render judgment by default against the person for the full amount claimed by the department in the notice to withhold and deliver, together with costs.

**Sec. 24.** RCW 82.36.130 and 1961 c 15 s 82.36.130 are each amended to read as follows:

If any ~~((distributor))~~ licensee is in default for more than ten days in the payment of any excise taxes or penalties thereon, the director shall issue a warrant under the official seal of ~~((his))~~ the director's office directed to the sheriff of any county of the state commanding him or her to levy upon and sell the goods and chattels of the ~~((distributor))~~ licensee, without exemption, found within his or her jurisdiction, for the payment of the amount of such delinquency, with the added penalties and interest and the cost of executing the warrant, and to return such warrant to the director and to pay the director the money collected by virtue thereof within the time to be therein specified, which shall not be less than twenty nor more than sixty days from the date of the warrant. The sheriff to whom the warrant is directed shall proceed upon it in all respects and with like effect and in the same manner as prescribed by law in respect to executions issued against goods and chattels upon judgment by a court of record and shall be entitled to the same fees for his or her services to be collected in the same manner.

**Sec. 25.** RCW 82.36.140 and 1961 c 15 s 82.36.140 are each amended to read as follows:

In a suit or action by the state on any bond filed with the director recovery thereon may be had without first having sought or exhausted its remedy against the ~~((distributor))~~ licensee; nor shall the fact that the state has pursued, or is in the course of pursuing, any remedy against the ~~((distributor))~~ licensee waive its right to collect the taxes, penalties, and interest by proceeding against such bond or against any deposit of money or securities made by the ~~((distributor))~~ licensee.

**Sec. 26.** RCW 82.36.150 and 1965 ex.s. c 79 s 5 are each amended to read as follows:

Every ~~((distributor))~~ licensee shall keep a true and accurate record on such form as the director may prescribe of all stock of petroleum products on hand, of all raw gasoline, gasoline stock, diesel oil, kerosene, kerosene distillates, casing-head gasoline and other petroleum products needed in, or which may be used in, compounding, blending, or manufacturing motor vehicle fuel; of the amount of crude oil refined, the gravity thereof and the yield therefrom, as well as of such other matters relating to transactions in petroleum products as the director may

require. Every ~~((distributor))~~ licensee shall take a physical inventory of the petroleum products at least once during each calendar month and have the record of such inventory and of the other matters mentioned in this section available at all times for the inspection of the director. Upon demand of the director every ~~((distributor))~~ licensee shall furnish a statement under oath as to the contents of any records to be kept hereunder.

~~((Every producer shall keep a true and accurate record in such form as may be prescribed by the director of all manufacture and distribution of casing-head gasoline, kerosene distillates and other petroleum products used in, or which may be used in, the blending, compounding, or manufacturing of motor vehicle fuel, and every broker shall likewise keep a true and accurate record of all purchases of such petroleum products in such manner as to disclose the vendor, the quantity purchased, the correct description of the commodity, and the means of transportation from such broker to the vendee. All records required by this section shall be available at all times for the inspection of the director or his representative who may require a statement under oath as to contents thereof.))~~

**Sec. 27.** RCW 82.36.160 and 1996 c 104 s 5 are each amended to read as follows:

Every ~~((distributor))~~ licensee shall maintain in the office of his or her principal place of business in this state, for a period of five years, records of motor vehicle fuel received, sold, distributed, or used by the ~~((distributor))~~ licensee, in such form as the director may prescribe, together with invoices, bills of lading, and other pertinent papers as may be required under the provisions of this chapter.

Every dealer purchasing motor vehicle fuel taxable under this chapter for the purpose of resale, shall maintain within this state, for a period of two years a record of motor vehicle fuels received, the amount of tax paid to the ~~((distributor))~~ licensee as part of the purchase price, together with delivery tickets, invoices, and bills of lading, and such other records as the director shall require.

**Sec. 28.** RCW 82.36.170 and 1961 c 15 s 82.36.170 are each amended to read as follows:

The director may, from time to time, require additional reports from ~~((distributors, brokers, dealers, or producers))~~ any licensee with reference to any of the matters herein concerned. Such reports shall be made and filed on forms prepared by the director.

**NEW SECTION. Sec. 29.** The department may require a person other than a licensee engaged in the business of selling, purchasing, distributing, storing, transporting, or delivering motor vehicle fuel to submit periodic reports to the department regarding the disposition of the fuel. The reports must be on forms prescribed by the department and must contain such information as the department may require.

**Sec. 30.** RCW 82.36.180 and 1967 ex.s. c 89 s 6 are each amended to read as follows:

The director, or ~~((his))~~ duly authorized agents, may make such examinations of the records, stocks, facilities, and equipment of ~~((distributors, producers, brokers))~~ any licensee, and service stations, and such other investigations as ~~((he may deem))~~ deemed necessary in carrying out the provisions of this chapter. If such examinations or investigations disclose that any reports of ~~((distributors of motor vehicle fuel))~~ licensees theretofore filed with the director pursuant to the requirements of this chapter have shown incorrectly the gallonage of motor vehicle fuel distributed or the tax accruing thereon, the director may make such changes in subsequent reports and payments of such ~~((distributors))~~ licensees as ~~((he may deem))~~ deemed necessary to correct the errors disclosed.

Every such ~~((distributor))~~ licensee or such other person not maintaining records in this state so that an audit of such records may be made by the director or ~~((his))~~ a duly authorized representative shall be required to make the necessary records available to the director ~~((at his))~~ upon request and at ~~((his))~~ a designated office within this state; or, in lieu thereof, the director or ~~((his))~~ a duly authorized representative shall proceed to any out-of-state office at which the records are prepared and maintained to make such examination.

Sec. 31. RCW 82.36.190 and 1990 c 250 s 80 are each amended to read as follows:

The department shall suspend or revoke the license of any ~~((distributor))~~ licensee refusing or neglecting to comply with any provision of this chapter. The department shall mail by registered mail addressed to such ~~((distributor))~~ licensee at ~~((his))~~ the last known address a notice of intention to cancel, which notice shall give the reason for cancellation. The cancellation shall become effective without further notice if within ten days from the mailing of the notice the ~~((distributor))~~ licensee has not made good his or her default or delinquency.

The department may cancel any license issued to any ~~((distributor))~~ licensee, such cancellation to become effective sixty days from the date of receipt of the written request of such ~~((distributor))~~ licensee for cancellation thereof, and the department may cancel the license of any ~~((distributor))~~ licensee upon investigation and sixty days notice mailed to the last known address of such ~~((distributor))~~ licensee if the department ascertains and finds that the person to whom the license was issued is no longer engaged in ~~((the))~~ business ~~((of a distributor))~~, and has not been so engaged for the period of six months prior to such cancellation. No license shall be canceled upon the request of any ~~((distributor))~~ licensee unless the ~~((distributor))~~ licensee, prior to the date of such cancellation, pays to the state all taxes imposed by the provisions of this chapter, together with all penalties accruing by reason of any failure on the part of the ~~((distributor))~~ licensee to make accurate reports or pay said taxes and penalties.

In the event the license of any ~~((distributor))~~ licensee is canceled, and in the further event that the ~~((distributor))~~ licensee pays to the state all excise taxes due and payable by him or her upon the receipt, sale, or use of motor vehicle fuel, together with any and all penalties accruing by reason of any failure on the part of the ~~((distributor))~~ licensee to make accurate reports or pay said taxes and

penalties, the department shall cancel the bond filed by the ~~((distributor))~~ licensee.

Sec. 32. RCW 82.36.200 and 1965 ex.s. c 79 s 7 are each amended to read as follows:

The director or ~~((his))~~ authorized agents may at any time during normal business hours examine the records, stocks, facilities and equipment of any person engaged in the transportation of motor vehicle fuel within the state of Washington for the purpose of checking shipments or use of motor vehicle fuel, detecting diversions thereof or evasion of taxes on same in enforcing the provisions of this chapter.

Sec. 33. RCW 82.36.210 and 1965 ex.s. c 79 s 8 are each amended to read as follows:

Every person operating any conveyance for the purpose of hauling, transporting or delivering motor vehicle fuel in bulk ~~((to points in this state from any point without this state)),~~ shall ~~((before entering upon the public highways of this state with such conveyance,))~~ have and possess during the entire time they are hauling motor vehicle fuel, an invoice, bill of sale, or other statement showing the ~~((true))~~ name ~~((and)),~~ address, and license number of the seller or consignor, the destination, name, and address of the purchaser or consignee, license number, if ~~((any))~~ applicable, and the number of gallons. The person hauling such motor vehicle fuel shall at the request of any ~~((sheriff, deputy sheriff, constable, highway patrolman))~~ law enforcement officer, or authorized representative of the department, or other person authorized by law to inquire into, or investigate said matters, produce ~~((and offer))~~ for inspection such invoice, bill of sale, or other statement and shall permit such official to inspect and gauge the contents of the vehicle. ~~((If the hauler fails to produce the invoice, bill of sale, or other statement, or if when produced it fails to disclose the aforesaid information, the officer or other person authorized to make inquiry, shall take and impound the motor vehicle fuel together with the conveying equipment until the tax on the motor vehicle fuel, together with penalty equal to one hundred percent of the tax, and other expenses, charges, and costs have been paid. In case of default, and the taking and impounding herein provided for, the tax, damages, and costs shall be collected, even though the full excise tax may have already been paid on the motor vehicle fuel. In case the tax, damages and other charges are not paid within forty eight hours after the taking of said property, the director may proceed to sell it in the mode and manner provided by law for the sale of personal property under execution:))~~

Sec. 34. RCW 82.36.230 and 1993 c 54 s 4 are each amended to read as follows:

The provisions of this chapter requiring the payment of taxes do not apply to motor vehicle fuel imported into the state in interstate or foreign commerce and intended to be sold while in interstate or foreign commerce, nor to motor vehicle fuel exported from this state by a ~~((qualified distributor))~~ licensee nor to any

motor vehicle fuel sold by a (~~qualified distributor~~) licensee to the armed forces of the United States or to the national guard for use exclusively in ships or for export from this state. The (~~distributor~~) licensee shall report such imports, exports and sales to the department at such times, on such forms, and in such detail as the department may require, otherwise the exemption granted in this section is null and void, and all fuel shall be considered distributed in this state fully subject to the provisions of this chapter. Each invoice covering exempt sales shall have the statement "Ex Washington Motor Vehicle Fuel Tax" clearly marked thereon.

To claim any exemption from taxes under this section on account of sales by a (~~licensed distributor~~) licensee of motor vehicle fuel for export, the purchaser shall obtain from the selling (~~distributor~~) licensee, and such selling (~~distributor~~) licensee must furnish the purchaser, an invoice giving such details of the sale for export as the department may require, copies of which shall be furnished the department and the entity of the state or foreign jurisdiction of destination which is charged by the laws of that state or foreign jurisdiction with the control or monitoring, or both, of the sales or movement of motor vehicle fuel in that state or foreign jurisdiction. For the purposes of this section, motor vehicle fuel distributed to a federally recognized Indian tribal reservation located within the state of Washington is not considered exported outside this state.

To claim any (~~exemption from taxes under this section~~) refund of taxes previously paid on account of sales of motor vehicle fuel to the armed forces of the United States or to the national guard, the (~~distributor~~) licensee shall be required to execute an exemption certificate in such form as shall be furnished by the department, containing a certified statement by an authorized officer of the armed forces having actual knowledge of the purpose for which the exemption is claimed. (~~Any claim for exemption based on such sales shall be made by the distributor within six months of the date of sale.~~) The provisions of this section exempting motor vehicle fuel sold to the armed forces of the United States or to the national guard from the tax imposed hereunder do not apply to any motor vehicle fuel sold to contractors purchasing such fuel either for their own account or as the agents of the United States or the national guard for use in the performance of contracts with the armed forces of the United States or the national guard.

The department may at any time require of any (~~distributor~~) licensee any information the department deems necessary to determine the validity of the claimed exemption, and failure to supply such data will constitute a waiver of all right to the exemption claimed. The department is hereby empowered with full authority to promulgate rules and regulations and to prescribe forms to be used by (~~distributors~~) licensees in reporting to the department so as to prevent evasion of the tax imposed by this chapter.

Upon request from the officials to whom are entrusted the enforcement of the motor vehicle fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, the provinces, or the Dominion of Canada,



the department may forward to such officials any information which the department may have relative to the import or export of any motor vehicle fuel by any ((distributor)) licensee: PROVIDED, That such governmental unit furnish like information to this state.

**NEW SECTION. Sec. 35.** A licensee, other than a motor vehicle fuel exporter, is entitled to a refund of motor vehicle fuel tax previously paid on motor vehicle fuel which is purchased from the licensee by a person who is exempt from payment of the motor vehicle fuel tax imposed by this chapter. Application for the refund shall be accompanied by an invoice or proof satisfactory to the department documenting each sale wherein the purchaser was exempt the motor vehicle fuel tax. Claims for refunds shall be made under this chapter.

**Sec. 36.** RCW 82.36.280 and 1993 c 141 s 1 are each amended to read as follows:

Any person who uses any motor vehicle fuel for the purpose of operating any internal combustion engine not used on or in conjunction with any motor vehicle licensed to be operated over and along any of the public highways, and as the motive power thereof, upon which motor vehicle fuel excise tax has been paid, shall be entitled to and shall receive a refund of the amount of the motor vehicle fuel excise tax paid on each gallon of motor vehicle fuel so used, whether such motor vehicle excise tax has been paid either directly to the vendor from whom the motor vehicle fuel was purchased or indirectly by adding the amount of such excise tax to the price of such fuel. No refund shall be made for motor vehicle fuel consumed by any motor vehicle as herein defined that is required to be registered and licensed as provided in chapter 46.16 RCW; and is operated over and along any public highway except that a refund shall be allowed for motor vehicle fuel consumed:

(1) In a motor vehicle owned by the United States that is operated off the public highways for official use;

(2) By auxiliary equipment not used for motive power, provided such consumption is accurately measured by a metering device that has been specifically approved by the department or is established by either of the following formulae:

(a) For fuel used in pumping fuel or heating oils by a power take-off unit on a delivery truck, refund shall be allowed claimant for tax paid on fuel purchased at the rate of three-fourths of one gallon for each one thousand gallons of fuel delivered: PROVIDED, That claimant when presenting his or her claim to the department in accordance with the provisions of this chapter, shall provide to said claim, invoices of fuel oil delivered, or such other appropriate information as may be required by the department to substantiate his or her claim; or

(b) For fuel used in operating a power take-off unit on a cement mixer truck or load compactor on a garbage truck, claimant shall be allowed a refund of twenty-five percent of the tax paid on all fuel used in such a truck; and

(c) The department is authorized to establish by rule additional formulae for determining fuel usage when operating other types of equipment by means of power take-off units when direct measurement of the fuel used is not feasible. The department is also authorized to adopt rules regarding the usage of on board computers for the production of records required by this chapter (~~(; and~~  
~~—(3) Before December 31, 1992, in a commercial vehicle as defined in RCW 46.04.140 or a farm vehicle as defined in RCW 46.04.181, if the motor vehicle fuel consumed contains nine and one-half percent or more by volume of alcohol and the commercial vehicle or farm vehicle is operated off the public highways of this state)).~~

Sec. 37. RCW 82.36.300 and 1963 ex.s. c 22 s 21 are each amended to read as follows:

Every person who shall export any motor vehicle fuel for use outside of this state and who has paid the motor vehicle fuel excise tax upon such motor vehicle fuel shall be entitled to and shall receive a refund of the amount of the motor vehicle fuel excise tax paid on each gallon of motor vehicle fuel so exported. For the purposes of this section, motor vehicle fuel distributed to a federally recognized Indian tribal reservation located within the state of Washington is not considered exported outside this state.

Sec. 38. RCW 82.36.310 and 1995 c 318 s 3 are each amended to read as follows:

Any person claiming a refund for motor vehicle fuel used or exported as in this chapter provided shall not be entitled to receive such refund until he presents to the director a claim upon forms to be provided by the director with such information as the director shall require, which claim to be valid shall in all cases be accompanied by the ~~((original))~~ invoice or invoices issued to the claimant at the time of the purchases of the motor vehicle fuel, approved as to invoice form by the director ~~((; PROVIDED, That in the event of the loss or destruction of the original invoice or invoices, the person claiming a refund may submit in lieu thereof a duplicate copy of such invoice certified by the vendor, but no payment of refund based upon such duplicate invoice shall be made until after expiration of such statutory period specified in RCW 82.36.330 for filing of refund applications)).~~ The requirement to provide invoices may be waived for small refund amounts, as determined by the department. Claims for refund of motor vehicle fuel tax must be at least twenty dollars.

Any person claiming refund by reason of exportation of motor vehicle fuel shall in addition to the invoices required furnish to the director the export certificate therefor, and the signature on the exportation certificate shall be certified by a notary public. In all cases the claim shall be signed by the person claiming the refund, if it is a corporation, by some proper officer of the corporation, or if it is a limited liability company, by some proper manager or member of the limited liability company.

**Sec. 39.** RCW 82.36.330 and 1971 ex.s. c 180 s 9 are each amended to read as follows:

Upon the approval of the director of the claim for refund, the state treasurer shall draw a warrant upon the state treasury for the amount of the claim in favor of the person making such claim and the warrant shall be paid from the excise tax collected on motor vehicle fuel: **PROVIDED**, That the state treasurer shall deduct from each marine use refund claim an amount equivalent to one cent per gallon and shall deposit the same in the coastal protection fund created by RCW 90.48.390. Applications for refunds of excise tax shall be filed in the office of the director not later than the close of the last business day of a period thirteen months from the date of purchase of such motor fuel, and if not filed within this period the right to refund shall be forever barred, except that such limitation shall not apply to claims for loss or destruction of motor vehicle fuel as provided by the provisions of RCW 82.36.370. The department shall pay interest of one percent on any refund payable under this chapter that is issued more than thirty state business days after the receipt of a claim properly filed and completed in accordance with this section. After the end of the thirty business-day period, additional interest shall accrue at the rate of one percent on the amount payable for each thirty calendar-day period, until the refund is issued. Any person or the member of any firm or the officer or agent of any corporation who makes any false statement in any claim required for the refund of excise tax, as provided in this chapter, or who collects or causes to be repaid to him or to any other person any such refund without being entitled to the same under the provisions of this chapter shall be guilty of a gross misdemeanor.

**Sec. 40.** RCW 82.36.335 and 1997 c 183 s 8 are each amended to read as follows:

in lieu of the collection and refund of the tax on motor vehicle fuel used by a ~~((distributor))~~ licensee in such a manner as would entitle a purchaser to claim refund under this chapter, credit may be given the ~~((distributor))~~ licensee upon the ~~((distributor's))~~ licensee's tax return in the determination of the amount of the ~~((distributor's))~~ licensee's tax. Payment credits shall not be carried forward and applied to subsequent tax returns.

**Sec. 41.** RCW 82.36.350 and 1961 c 15 s 82.36.350 are each amended to read as follows:

If upon investigation the director determines that any claim has been supported by an invoice or invoices fraudulently made or altered in any manner to support the claim, ~~((he))~~ the director may suspend the pending and all further refunds to any such person making the claim for a period not to exceed one year.

**Sec. 42.** RCW 82.36.370 and 1967 c 153 s 5 are each amended to read as follows:

(1) A refund shall be made in the manner provided in this chapter or a credit given allowing for the excise tax paid or accrued on all motor vehicle fuel which

is lost or destroyed, while applicant shall be the owner thereof, through fire, lightning, flood, wind storm, or explosion.

(2) A refund shall be made in the manner provided in this chapter or a credit given allowing for the excise tax paid or accrued on all motor vehicle fuel of five hundred gallons or more which is lost or destroyed, while applicant shall be the owner thereof, through leakage or other casualty except evaporation, shrinkage or unknown causes: PROVIDED, That the director shall be notified in writing as to the full circumstances surrounding such loss or destruction and the amount of the loss or destruction within thirty days from the day of discovery of such loss or destruction.

(3) Recovery for such loss or destruction under either subsection (1) or (2) must be susceptible to positive proof thereby enabling the director to conduct such investigation and require such information as ~~((he))~~ the director may deem necessary.

In the event that the director is not satisfied that the fuel was lost or destroyed as claimed, wherefore required information or proof as required hereunder is not sufficient to substantiate the accuracy of the claim, ~~((he))~~ the director may deem as sufficient cause the denial of all right relating to the refund or credit for the excise tax on motor vehicle fuel alleged to be lost or destroyed.

**NEW SECTION.** Sec. 43. A motor vehicle fuel distributor, motor vehicle fuel importer, or motor vehicle fuel blender, under rules adopted by the department, is entitled to a refund of the tax paid on those sales of motor vehicle fuel for which no consideration has been received from or on behalf of the purchaser and that has been declared to be worthless accounts receivable. The amount of tax refunded must not exceed the amount of tax paid by the motor vehicle fuel distributor, motor vehicle fuel importer, or motor vehicle fuel blender under this chapter. If the motor vehicle fuel distributor, motor vehicle fuel importer, or motor vehicle fuel blender subsequently collects any amount from the account declared worthless, the amount collected shall be apportioned between the charges for the fuel and tax thereon. The motor vehicle fuel tax collected must be returned to the department.

Sec. 44. RCW 82.36.375 and 1965 ex.s. c 79 s 16 are each amended to read as follows:

Unless otherwise provided, any credit for erroneous overpayment of tax made by a ~~((distributor))~~ licensee to be taken on a subsequent return or any claim of refund for tax erroneously overpaid by a ~~((distributor))~~ licensee, pursuant to the provisions of RCW 82.36.090, must be so taken within ~~((three))~~ five years after the date on which the overpayment was made to the state. Failure to take such credit or claim such refund within the time prescribed in this section shall constitute waiver of any and all demands against this state on account of overpayment hereunder.

Except in the case of a fraudulent report or neglect or refusal to make a report every notice of additional tax, penalty or interest assessed hereunder shall be

served on the ~~((distributor))~~ licensee within ~~((three))~~ five years from the date upon which such additional taxes became due.

Sec. 45. RCW 82.36.390 and 1996 c 104 s 6 are each amended to read as follows:

Any person who ~~((, through false statement, trick, or device, or otherwise,))~~ obtains motor vehicle fuel for export and fails to export the same or any portion thereof, or causes such motor vehicle fuel or any thereof not to be exported, or who diverts said motor vehicle fuel or any thereof or who causes it to be diverted from interstate or foreign transit begun in this state, or who unlawfully returns such fuel or any thereof to this state and sells or uses it or any thereof in this state or causes it or any thereof to be used or sold in this state and fails to notify the ~~((distributor))~~ licensee from whom such motor vehicle fuel was originally purchased ~~((of his or her act))~~, and any ~~((distributor))~~ licensee or ~~((other))~~ person who conspires with any person to withhold from export, or divert from interstate or foreign transit begun in this state, or to return motor vehicle fuel to this state for sale or use with intent to avoid any of the taxes imposed by this chapter, is guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. Each shipment illegally diverted or illegally returned shall be a separate offense, and the unit of each shipment shall be the cargo of one vessel, or one railroad carload, or one automobile truck load, or such truck and trailer load, or one drum, or one barrel, or one case or one can.

Sec. 46. RCW 82.36.400 and 1971 ex.s. c 156 s 3 are each amended to read as follows:

It shall be unlawful for any person to commit any of the following acts:

(1) To display, or cause to permit to be displayed, or to have in possession, any motor vehicle fuel ~~((distributor's))~~ license knowing the same to be fictitious or to have been suspended, canceled, revoked or altered;

(2) To lend to, or knowingly permit the use of, by one not entitled thereto, any motor vehicle fuel ~~((distributor's))~~ license issued to the person lending it or permitting it to be used;

(3) To display or to represent as one's own any motor vehicle fuel ~~((distributor's))~~ license not issued to the person displaying the same;

(4) To use a false or fictitious name or give a false or fictitious address in any application or form required under the provisions of this chapter, or otherwise commit a fraud in any application, record, or report;

(5) To refuse to permit the director, or any agent appointed by him or her in writing, to examine his or her books, records, papers, storage tanks, or other equipment pertaining to the use or sale and delivery of motor vehicle fuels within the state.

Except as otherwise provided, any person violating any of the provisions of this chapter shall be guilty of a gross misdemeanor and shall, upon conviction thereof, be sentenced to pay a fine of not less than five hundred dollars nor more

than one thousand dollars and costs of prosecution, or imprisonment for not more than one year, or both.

**NEW SECTION. Sec. 47.** A motor vehicle fuel distributor who incurs liability in December 1998 for the motor vehicle fuel tax imposed under this chapter shall report the liability and pay the tax in January 1999 in the manner required by this chapter as it existed before January 1, 1999.

A motor vehicle fuel distributor shall inventory all motor vehicle fuel that is on hand or in possession as of 12:01 a.m. on January 1, 1999, and is not in the bulk transfer-terminal system and shall report the results of the inventory to the department no later than the last business day of February 1999. The report of inventory must be made on a form prescribed by the department.

A motor vehicle fuel distributor may pay the tax due on motor vehicle fuel in inventory any time before February 28, 2000, but at least one-twelfth of the amount due must be paid by the last day of each month starting with February 1999. Payments not received in accordance with this section are late and are subject to the interest and penalty provisions of this chapter. Payments made after February 2000 are late and are subject to the interest and penalty provisions of this chapter.

**NEW SECTION. Sec. 48.** (1) It is intended that the ultimate liability for the tax imposed under this chapter be upon the motor vehicle fuel user, regardless of the manner in which collection of the tax is provided for in this chapter. The tax on motor vehicle fuel imposed under this chapter, if not previously imposed and paid, must be paid over to the department by the users of such motor vehicle fuel, unless such use is exempt from the motor vehicle fuel tax.

(2) This section does not apply to agreements entered into under RCW 82.36.450 between the department and federally recognized Indian tribes, nor does it apply to the consent decrees entered in *Confederated Tribes of the Colville Reservation v. Washington Department of Licensing*, No. CS-92-248-JLQ (E.D. Wash.) and *Teo v. Steffenson*, No. CY-93-3050-AAM (E.D. Wash.).

**NEW SECTION. Sec. 49.** The department of licensing may enter into a motor vehicle fuel tax cooperative agreement with another state or Canadian province for the administration, collection, and enforcement of each state's or Canadian province's motor vehicle fuel taxes.

**Sec. 50.** RCW 82.38.020 and 1995 c 287 s 3 are each amended to read as follows:

~~((As used in this chapter:~~

~~(1) "Person" means every natural person, fiduciary, association, or corporation. The term "person" as applied to an association means and includes the partners or members thereof, and as applied to corporations, the officers thereof.~~

~~(2) "Department" means the department of licensing.~~

~~(3) "Highway" means every way or place open to the use of the public, as a matter of right, for the purpose of vehicular travel.~~

—(4) "~~Motor vehicle~~" means ~~every self-propelled vehicle designed for operation upon land utilizing special fuel as the means of propulsion:~~

—(5) "~~Special fuel~~" means ~~and includes all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as defined in chapter 82.36 RCW:~~

—(6) "~~Bulk storage~~" means ~~the placing of special fuel by a special fuel dealer into a receptacle other than the fuel supply tank of a motor vehicle:~~

—(7) "~~Special fuel dealer~~" means ~~any person engaged in the business of delivering special fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him, or into bulk storage facilities for subsequent use in a motor vehicle. For this purpose the term "fuel supply tank or tanks" does not include cargo tanks even though fuel is withdrawn directly therefrom for propulsion of the vehicle:~~

—(8) "~~Special fuel user~~" means ~~any person purchasing special fuel into bulk storage without payment of the special fuel tax for subsequent use in a motor vehicle, or any person engaged in interstate commercial operation of motor vehicles any part of which is within this state:~~

—(9) "~~Service station~~" means ~~any location at which fueling of motor vehicles is offered to the general public:~~

—(10) "~~Unbonded service station~~" means ~~any service station at which an unbonded special fuel dealer regularly makes sales of special fuel by means of delivery thereof into the fuel supply tanks of motor vehicles:~~

—(11) "~~Bond~~" means: (a) ~~A bond duly executed by such special fuel dealer or special fuel user as principal with a corporate surety qualified under the provisions of chapter 48.28 RCW which bond shall be payable to the state of Washington conditioned upon faithful performance of all requirements of this chapter, including the payment of all taxes, penalties, and other obligations of such dealer, arising out of this chapter; or (b) a deposit with the state treasurer by the special fuel dealer or special fuel user, under such terms and conditions as the department may prescribe, a like amount of lawful money of the United States or bonds or other obligations of the United States, the state of Washington, or any county of said state, of an actual market value not less than the amount so fixed by the department; or (c) such other instruments as the department may determine and prescribe by rule to protect the interests of the state and to insure compliance of the requirements of this chapter:~~

—(12) "~~Lessor~~" means ~~any person (a) whose principal business is the bona fide leasing or renting of motor vehicles without drivers for compensation to the general public, and (b) who maintains established places of business and whose lease or rental contracts require such motor vehicles to be returned to the established places of business:~~

—(13) "~~Natural gas~~" means ~~naturally occurring mixtures of hydrocarbon gases and vapors consisting principally of methane, whether in gaseous or liquid form:~~

—(14) "~~Standard pressure and temperature~~" means ~~fourteen and seventy-three hundredths pounds of pressure per square inch at sixty degrees Fahrenheit:~~

~~— (15) "Evasion" or "evade" means to diminish or avoid the computation, assessment, or payment of authorized taxes or fees through:~~

~~— (a) A knowing: False statement, misrepresentation of fact, or other act of deception; or~~

~~— (b) An intentional: Omission, failure to file a return or report, or other act of deception.)~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Blended special fuel" means a mixture of undyed diesel fuel and another liquid, other than a de minimus amount of the liquid, that can be used as a fuel to propel a motor vehicle.

(2) "Blender" means a person who produces blended special fuel outside the bulk transfer-terminal system.

(3) "Bond" means a bond duly executed with a corporate surety qualified under chapter 48.28 RCW, which bond is payable to the state of Washington conditioned upon faithful performance of all requirements of this chapter, including the payment of all taxes, penalties, and other obligations arising out of this chapter.

(4) "Bulk transfer-terminal system" means the special fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Special fuel in a refinery, pipeline, vessel, or terminal is in the bulk transfer-terminal system. Special fuel in the fuel tank of an engine, motor vehicle, or in a railcar, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer-terminal system.

(5) "Bulk transfer" means a transfer of special fuel by pipeline or vessel.

(6) "Bulk storage" means the placing of special fuel into a receptacle other than the fuel supply tank of a motor vehicle.

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

(8) "Dyed special fuel user" means a person authorized by the Internal Revenue Code to operate a motor vehicle on the highway using dyed special fuel, in which the use is not exempt from the special fuel tax.

(9) "Evasion" or "evade" means to diminish or avoid the computation, assessment, or payment of authorized taxes or fees through:

(a) A knowing: False statement; misrepresentation of fact; or other act of deception; or

(b) An intentional: Omission; failure to file a return or report; or other act of deception.

(10) "Export" means to obtain special fuel in this state for sales or distribution outside the state.

(11) "Highway" means every way or place open to the use of the public, as a matter of right, for the purpose of vehicular travel.

(12) "Import" means to bring special fuel into this state by a means of conveyance other than the fuel supply tank of a motor vehicle.



(13) "International fuel tax agreement licensee" means a special fuel user operating qualified motor vehicles in interstate commerce and licensed by the department under the international fuel tax agreement.

(14) "Lessor" means a person: (a) Whose principal business is the bona fide leasing or renting of motor vehicles without drivers for compensation to the general public; and (b) who maintains established places of business and whose lease or rental contracts require the motor vehicles to be returned to the established places of business.

(15) "Licensee" means a person holding a license issued under this chapter.

(16) "Motor vehicle" means a self-propelled vehicle designed for operation upon land utilizing special fuel as the means of propulsion.

(17) "Natural gas" means naturally occurring mixtures of hydrocarbon gases and vapors consisting principally of methane, whether in gaseous or liquid form.

(18) "Person" means a natural person, fiduciary, association, or corporation. The term "person" as applied to an association means and includes the partners or members thereof, and as applied to corporations, the officers thereof.

(19) "Position holder" means a person who holds the inventory position in special fuel, as reflected by the records of the terminal operator. A person holds the inventory position in special fuel if the person has a contractual agreement with the terminal for the use of storage facilities and terminating services at a terminal with respect to special fuel. "Position holder" includes a terminal operator that owns special fuel in their terminal.

(20) "Rack" means a mechanism for delivering special fuel from a refinery or terminal into a truck, trailer, railcar, or other means of nonbulk transfer.

(21) "Refiner" means a person who owns, operates, or otherwise controls a refinery.

(22) "Removal" means a physical transfer of special fuel other than by evaporation, loss, or destruction.

(23) "Special fuel" means and includes all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as defined in chapter 82.36 RCW, nor does it include dyed special fuel as defined by federal regulations. However, if the federal regulations authorize dyed special fuel to be used in highway vehicles, that usage is considered taxable under this chapter, unless otherwise exempted.

(24) "Special fuel distributor" means a person who acquires special fuel from a supplier, distributor, or licensee for subsequent sale and distribution.

(25) "Special fuel exporter" means a person, who purchases special fuel in this state and directly exports the fuel by a means other than the bulk transfer-terminal system to a destination outside of the state.

(26) "Special fuel importer" means a person who imports special fuel into the state by a means other than the bulk transfer-terminal system. If the importer of record is acting as an agent, the person for whom the agent is acting is the importer. If there is no importer of record, the owner of the special fuel at the time of importation is the importer.

(27) "Special fuel supplier" means a person who owns and stores special fuel in a terminal facility or who refines and stores special fuel at a refinery.

(28) "Special fuel user" means a person engaged in uses of special fuel that are not specifically exempted from the special fuel tax imposed under this chapter.

(29) "Terminal" means a special fuel storage and distribution facility that has been assigned a terminal control number by the internal revenue service, is supplied by pipeline or vessel, and from which reportable special fuel is removed at a rack.

(30) "Terminal operator" means a person who owns, operates, or otherwise controls a terminal.

(31) "Two-party exchange" or "buy-sell agreement" means a transaction in which taxable special fuel is transferred from one licensed supplier to another licensed supplier under an exchange or buy-sell agreement whereby the supplier that is the position holder agrees to deliver taxable special fuel to the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder.

Sec. 51. RCW 82.38.030 and 1996 c 104 s 7 are each amended to read as follows:

(1) There is hereby levied and imposed upon special fuel users a tax at the rate computed in the manner provided in RCW 82.36.025 ~~((per))~~ on each gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature ~~((on the use of special fuel in any motor vehicle operated upon the highways of this state during the fiscal year for which such rate is applicable))~~.

~~(2) The tax ((shall be collected by the special fuel dealer and shall be paid over to the department as hereinafter provided: (a) With respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles or into storage facilities used for the fueling of motor vehicles at unbonded service stations in this state; or (b) in all other transactions where the purchaser is not the holder of a valid special fuel license issued pursuant to this chapter allowing the purchase of untaxed special fuel, except sales of special fuel for export. To claim an exemption on account of sales by a licensed special fuel dealer for export, the purchaser shall obtain from the selling special fuel dealer, and such selling special fuel dealer must furnish the purchaser, an invoice giving such details of the sale for export as the director may require, copies of which shall be furnished the department and the entity of the state or foreign jurisdiction of destination which is charged by the laws of that state or foreign jurisdiction with the control or monitoring or both, of the sales or movement of special fuel in that state or foreign jurisdiction.~~

~~—(3) The tax shall be paid over to the department by the special fuel user as hereinafter provided with respect to the taxable use of special fuel upon which the tax has not previously been imposed.~~

~~It is expressly provided that delivery of special fuel may be made without collecting the tax otherwise imposed, when such deliveries are made by a bonded special fuel dealer to special fuel users who are authorized by the department as hereinafter provided, to purchase fuel without payment of tax to the bonded special fuel dealer.~~

~~(4)) imposed by subsection (1) of this section is imposed when:~~

~~(a) Special fuel is removed in this state from a terminal if the special fuel is removed at the rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state, or the removal is to a special fuel distributor for direct delivery to an international fuel tax agreement licensee under section 83 of this act;~~

~~(b) Special fuel is removed in this state from a refinery if either of the following applies:~~

~~(i) The removal is by bulk transfer and the refiner or the owner of the special fuel immediately before the removal is not a licensee; or~~

~~(ii) The removal is at the refinery rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state, or the removal is to a special fuel distributor for direct delivery to an international fuel tax agreement licensee under section 83 of this act;~~

~~(c) Special fuel enters into this state for sale, consumption, use, or storage if either of the following applies:~~

~~(i) The entry is by bulk transfer and the importer is not a licensee; or~~

~~(ii) The entry is not by bulk transfer;~~

~~(d) Special fuel is removed in this state to an unlicensed entity unless there was a prior taxable removal, entry, or sale of the special fuel;~~

~~(e) Blended special fuel is removed or sold in this state by the blender of the fuel. The number of gallons of blended special fuel subject to tax is the difference between the total number of gallons of blended special fuel removed or sold and the number of gallons of previously taxed special fuel used to produce the blended special fuel;~~

~~(f) Dyed special fuel is used on a highway, as authorized by the Internal Revenue Code, unless the use is exempt from the special fuel tax; and~~

~~(g) Special fuel purchased by an international fuel tax agreement licensee under section 83 of this act is used on a highway.~~

~~(3) The tax ((required)) imposed by this chapter, if required to be collected by the ((seller)) licensee, is held in trust by the ((seller)) licensee until paid to the department, and a ((seller)) licensee who appropriates or converts the tax collected to his or her 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 is guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to collect the tax imposed by this section, or who has collected the tax and fails to pay it to~~

the department in the manner prescribed by this chapter, is personally liable to the state for the amount of the tax.

**NEW SECTION. Sec. 52.** The tax under RCW 82.38.030, if not previously imposed and paid, must be paid over to the department by special fuel users and persons licensed under the international fuel tax agreement or other fuel tax reciprocity agreements entered into with the state of Washington, on the use of special fuel to operate motor vehicles on the highways of this state, unless the use is exempt from the tax under this chapter.

**NEW SECTION. Sec. 53.** (1) A position holder shall remit tax to the department on special fuel removed from a terminal as provided in RCW 82.38.030(2)(a). On a two-party exchange, or buy-sell agreement between two suppliers, the receiving exchange partner or buyer becomes the position holder, who shall remit the tax.

(2) A refiner shall remit tax to the department on special fuel removed from a refinery as provided in RCW 82.38.030(2)(b).

(3) An importer shall remit tax to the department on special fuel imported into this state as provided in RCW 82.38.030(2)(c).

(4) A blender shall remit tax to the department on the removal or sale of blended special fuel as provided in RCW 82.38.030(2)(e).

(5) A dyed special fuel user shall remit tax to the department on the use of dyed special fuel as provided in RCW 82.38.030(2)(f).

**NEW SECTION. Sec. 54.** A terminal operator is jointly and severally liable for remitting the tax imposed under RCW 82.38.030(1) if, at the time of removal:

(1) The position holder with respect to the special fuel is a person other than the terminal operator and is not a licensee;

(2) The terminal operator is not a licensee;

(3) The position holder has an expired internal revenue service notification certificate issued under chapter 26, C.F.R. Part 48; or

(4) The terminal operator had reason to believe that information on the notification certificate was false.

**NEW SECTION. Sec. 55.** A terminal operator is jointly and severally liable for remitting the tax imposed under RCW 82.38.030(1) if, in connection with the removal of special fuel that is not dyed or marked in accordance with internal revenue service requirements, the terminal operator provides a person with a bill of lading, shipping paper, or similar document indicating that the special fuel is dyed or marked in accordance with internal revenue service requirements.

**NEW SECTION. Sec. 56.** A person may not operate or maintain a motor vehicle on a public highway of this state with dyed special fuel in the fuel supply tank unless the use is authorized by the Internal Revenue Code and the person is the holder of an uncanceled dyed special fuel user license issued to him or her by the department. The special fuel tax set forth in RCW 82.38.030 is imposed on users of dyed special fuel authorized by the Internal Revenue Code to operate on-

highway motor vehicles using dyed special fuel, unless the use is exempt from the special fuel tax.

**NEW SECTION. Sec. 57.** (1) Special fuel that is dyed satisfies the dyeing requirements of this chapter if it meets the dyeing requirements of the internal revenue service, including, but not limited to, requirements respecting type, dosage, and timing.

(2) Marking must meet the marking requirements of the internal revenue service.

(3) As required by the internal revenue service, notice is required with respect to dyed special fuel. A notice stating "DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE" must be:

(a) Provided by the terminal operator to a person who receives dyed special fuel at a terminal rack of that terminal operator;

(b) Provided by a seller of dyed special fuel to its buyer if the special fuel is located outside the bulk transfer-terminal system and is not sold from a retail pump posted in accordance with the requirements of this subsection; or

(c) Posted by a seller on a retail pump where it sells dyed special fuel for use by its buyer.

**Sec. 58.** RCW 82.38.070 and 1990 c 250 s 83 are each amended to read as follows:

A special fuel (~~((dealer shall be))~~) supplier is entitled(~~((under rules and regulations prescribed by the department;))~~) to a credit of the tax paid over to the department on those sales of special fuel for which the (~~((dealer))~~) supplier has received no consideration from or on behalf of the purchaser(~~((, which have been declared by the dealer to be worthless accounts receivable, and which have been claimed as bad debts for federal income tax purposes))~~). The amount of the tax (~~((refunded))~~) credit shall not exceed the amount of tax imposed by this chapter on such sales. If a (~~((refund))~~) credit has been granted under this section, any amounts collected for application against the accounts on which such a (~~((refund))~~) credit is based shall be reported (~~((with the first))~~) on a subsequent return filed after such collection, and the amount of (~~((refund))~~) credit received by the (~~((dealer))~~) supplier based upon the collected amount shall be returned to the department. In the event the (~~((refund))~~) credit has not been paid, the amount of the (~~((refund))~~) credit requested by the (~~((dealer))~~) supplier shall be adjusted by the department to reflect the decrease in the amount on which the claim is based. (~~((The department may require the dealer to submit periodical reports listing accounts which are delinquent for ninety days or more.))~~)

**NEW SECTION. Sec. 59.** A special fuel distributor, special fuel importer, or special fuel blender, under rules adopted by the department, is entitled to a refund of the tax paid on those sales of special fuel for which no consideration has been received from or on behalf of the purchaser and that have been declared to be worthless accounts receivable. The amount of the tax refunded must not exceed the amount of tax paid by the special fuel distributor, special fuel

importer, or special fuel blender paid under this chapter. If the special fuel distributor, special fuel importer, or special fuel blender subsequently collects any amount from the account declared worthless, the amount collected shall be apportioned between the charges for the fuel and tax thereon. The special fuel tax collected must be returned to the department.

**Sec. 60.** RCW 82.38.080 and 1996 c 244 s 6 are each amended to read as follows:

(1) There is exempted from the tax imposed by this chapter, the use of fuel for:

~~((1))~~ (a) Street and highway construction and maintenance purposes in motor vehicles owned and operated by the state of Washington, or any county or municipality;

~~((2))~~ (b) Publicly owned fire fighting equipment;

~~((3))~~ (c) Special mobile equipment as defined in RCW 46.04.552;

~~((4))~~ (d) Power pumping units or other power take-off equipment of any motor vehicle which is accurately measured by metering devices that have been specifically approved by the department or which is established by ~~((either))~~ any of the following formulae:

~~((a))~~ (i) Pumping propane, or fuel or heating oils or milk picked up from a farm or dairy farm storage tank by a power take-off unit on a delivery truck, at ~~((the))~~ a rate ~~((of three-fourths of one gallon for each one thousand gallons of fuel delivered or milk picked up))~~ determined by the department: PROVIDED, That claimant when presenting his or her claim to the department in accordance with ~~((the provisions of))~~ this chapter, shall provide to ~~((said))~~ the claim, invoices of propane, or fuel or heating oil delivered, or such other appropriate information as may be required by the department to substantiate his or her claim; ~~((or~~

~~—(b))~~ (ii) Operating a power take-off unit on a cement mixer truck or a load compactor on a garbage truck at the rate of twenty-five percent of the total gallons of fuel used in such a truck; ~~((and))~~ or

~~((e))~~ (iii) The department is authorized to establish by rule additional formulae for determining fuel usage when operating other types of equipment by means of power take-off units when direct measurement of the fuel used is not feasible. The department is also authorized to adopt rules regarding the usage of on board computers for the production of records required by this chapter;

~~((5))~~ (e) Motor vehicles owned and operated by the United States government;

~~((6))~~ (f) Heating purposes;

~~((7))~~ (g) Moving a motor vehicle on a public highway between two pieces of private property when said moving is incidental to the primary use of the motor vehicle;

~~((8))~~ (h) Transportation services for persons with special transportation needs by a private, nonprofit transportation provider regulated under chapter 81.66 RCW; ~~((and~~

—(9)) (i) Vehicle refrigeration units, mixing units, or other equipment powered by separate motors from separate fuel tanks; and

(j) The operation of a motor vehicle as a part of or incidental to logging operations upon a highway under federal jurisdiction within the boundaries of a federal area if the federal government requires a fee for the privilege of operating the motor vehicle upon the highway, the proceeds of which are reserved for constructing or maintaining roads in the federal area, or requires maintenance or construction work to be performed on the highway for the privilege of operating the motor vehicle on the highway.

(2) There is exempted from the tax imposed by this chapter the removal or entry of special fuel under the following circumstances and conditions:

(a) If it is the removal from a terminal or refinery of, or the entry or sale of, a special fuel if all of the following apply:

(i) The person otherwise liable for the tax is a licensee other than a dyed special fuel user or international fuel tax agreement licensee;

(ii) For a removal from a terminal, the terminal is a licensed terminal; and

(iii) The special fuel satisfies the dyeing and marking requirements of this chapter;

(b) If it is an entry or removal from a terminal or refinery of taxable special fuel transferred to a refinery or terminal and the persons involved, including the terminal operator, are licensed; and

(c)(i) If it is a special fuel that, under contract of sale, is shipped to a point outside this state by a supplier by means of any of the following:

(A) Facilities operated by the supplier;

(B) Delivery by the supplier to a carrier, customs broker, or forwarding agent, whether hired by the purchaser or not, for shipment to the out-of-state point;

(C) Delivery by the supplier to a vessel clearing from port of this state for a port outside this state and actually exported from this state in the vessel.

(ii) For purposes of this subsection (2)(c):

(A) "Carrier" means a person or firm engaged in the business of transporting for compensation property owned by other persons, and includes both common and contract carriers; and

(B) "Forwarding agent" means a person or firm engaged in the business of preparing property for shipment or arranging for its shipment.

(3) Notwithstanding any provision of law to the contrary, every urban passenger transportation system and carriers as defined by chapters 81.68 and 81.70 RCW shall be exempt from the provisions of this chapter requiring the payment of special fuel taxes. For the purposes of this section "urban passenger transportation system" means every transportation system, publicly or privately owned, having as its principal source of revenue the income from transporting persons for compensation by means of motor vehicles and/or trackless trolleys, each having a seating capacity for over fifteen persons over prescribed routes in such a manner that the routes of such motor vehicles and/or trackless trolleys, either alone or in conjunction with routes of other such motor vehicles and/or

trackless trolleys subject to routing by the same transportation system, shall not extend for a distance exceeding twenty-five road miles beyond the corporate limits of the county in which the original starting points of such motor vehicles are located: PROVIDED, That no refunds or credits shall be granted on special fuel used by any urban transportation vehicle or vehicle operated pursuant to chapters 81.68 and 81.70 RCW on any trip where any portion of said trip is more than twenty-five road miles beyond the corporate limits of the county in which said trip originated.

Sec. 61. RCW 82.38.090 and 1995 c 20 s 13 are each amended to read as follows:

(1) It shall be unlawful for any person to (~~act as a special fuel dealer or a special fuel user~~) engage in business in this state as any of the following unless ((~~such~~)) the person is the holder of an uncanceled ((~~special fuel dealer's or a special fuel user's~~)) license issued to him or her by the department((:

~~—A special fuel dealer's license authorizes a person to deliver previously untaxed special fuel into the fuel supply tanks of motor vehicles, collect the special fuel tax on behalf of the state at the time of delivery, and remit the taxes collected to the state as provided herein. A licensed special fuel dealer may also deliver untaxed special fuel into bulk storage facilities of a licensed special fuel user or dealer without collecting the special fuel tax. Special fuel dealers, when making deliveries of special fuel into bulk storage to any person not holding a valid special fuel license, must collect the special fuel tax at time of delivery, unless the person to whom the delivery is made is specifically exempted from the tax as provided herein.~~

~~—A special fuel user's license authorizes a person to purchase special fuel into bulk storage for use in motor vehicles either on or off the public highways of this state without payment of the special fuel tax at time of purchase. Holders of special fuel licenses are all subject to the bonding, reporting, tax payment, and record-keeping provisions of this chapter. All purchases of special fuel by a licensed special fuel user directly into the fuel supply tank of a motor vehicle are subject to the special fuel tax at time of purchase. Special authorization may be given to farmers, logging companies, and construction companies to purchase special fuel directly into the supply tanks of nonhighway equipment or into portable slip tanks for nonhighway use without payment of the special fuel tax.))~~  
authorizing the person to engage in that business:

- (a) Special fuel supplier;
- (b) Special fuel distributor;
- (c) Special fuel exporter;
- (d) Special fuel importer;
- (e) Special fuel blender;
- (f) Dyed special fuel user; or
- (g) International fuel tax agreement licensee.

(2) A person engaged in more than one activity for which a license is required must have a separate license classification for each activity, but a special



fuel supplier is not required to obtain a separate license classification for any other activity for which a license is required.

(3) Special fuel users operating motor vehicles in interstate commerce having two axles and a gross vehicle weight or registered gross vehicle weight not exceeding twenty-six thousand pounds are not required to be licensed. Special fuel users operating motor vehicles in interstate commerce having two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds, or having three or more axles regardless of weight, or a combination of vehicles, when the combination exceeds twenty-six thousand pounds gross vehicle weight, must comply with the licensing and reporting requirements of this chapter. A copy of the license must be carried in each motor vehicle entering this state from another state or province.

Sec. 62. RCW 82.38.100 and 1983 c 78 s 1 are each amended to read as follows:

(1) Any special fuel user operating a motor vehicle into this state for commercial purposes may make application for a trip permit (~~(in lieu of a special fuel user's license required in RCW 82.38.090 and 82.38.120 which)~~) that shall be good for a period of three consecutive days beginning and ending on the dates specified on the face of the permit issued, and only for the vehicle for which it is issued.

(2) Every permit shall identify, as the department may require, the vehicle for which it is issued and shall be completed in its entirety, signed, and dated by the operator before operation of the vehicle on the public highways of this state. Correction of data on the permit such as dates, vehicle license number, or vehicle identification number invalidates the permit. A violation of, or a failure to comply with, this subsection is a gross misdemeanor.

(3) For each permit issued, there shall be collected a filing fee of one dollar, an administrative fee of ten dollars, and an excise tax of nine dollars. Such fees and tax shall be in lieu of the special fuel tax otherwise assessable against the permit holder for importing and using special fuel in a motor vehicle on the public highways of this state and no report of mileage shall be required with respect to such vehicle. Trip permits will not be issued if the applicant has outstanding fuel taxes, penalties or interest owing to the state or has had a special fuel license revoked for cause and the cause has not been removed.

(4) Blank permits may be obtained from field offices of the department of transportation, Washington state patrol, department of licensing, or other agents appointed by the department. The department may appoint county auditors or businesses as agents for the purpose of selling trip permits to the public. County auditors or businesses so appointed may retain the filing fee collected for each trip permit to defray expenses incurred in handling and selling the permits.

(5) All fees and excise taxes collected by the department for trip permits shall be credited and deposited in the same manner as the special fuel tax collected under this chapter and shall not be subject to exchange, refund, or credit.

Sec. 63. RCW 82.38.110 and 1996 c 104 s 8 are each amended to read as follows:

(1) Application for a ((special fuel dealer's license or a special fuel user's)) license issued under this chapter shall be made to the department. The application shall be filed upon a form prepared and furnished by the department and shall contain such information as the department deems necessary.

(2) Every application for a special fuel ((dealer's)) license, other than an application for a dyed special fuel user or international fuel tax agreement license, must contain the following information to the extent it applies to the applicant:

~~((1))~~ (a) Proof as the department ((may)) shall require concerning the applicant's identity, including but not limited to his or her fingerprints or those of the officers of a corporation making the application;

~~((2))~~ (b) The applicant's form and place of organization including proof that the individual, partnership, or corporation is licensed to do business in this state;

~~((3))~~ (c) The qualification and business history of the applicant and any partner, officer, or director;

~~((4))~~ (d) The applicant's financial condition or history including a bank reference and whether the applicant or any partner, officer, or director has ever been adjudged bankrupt or has an unsatisfied judgment in a federal or state court;

~~((5))~~ (e) Whether the applicant has been adjudged guilty of a crime that directly relates to the business for which the license is sought and the time elapsed since the conviction is less than ten years, or has suffered a judgment within the preceding five years in a civil action involving fraud, misrepresentation, or conversion and in the case of a corporation or partnership, all directors, officers, or partners.

(3) An applicant for a license as a special fuel importer must list on the application each state, province, or country from which the applicant intends to import fuel and, if required by the state, province, or country listed, must be licensed or registered for special fuel tax purposes in that state, province, or country.

(4) An applicant for a license as a special fuel exporter must list on the application each state, province, or country to which the exporter intends to export special fuel received in this state by means of a transfer outside the bulk transfer-terminal system and, if required by the state, province, or country listed, must be licensed or registered for special fuel tax purposes in that state, province, or country.

(5) An applicant for a license as a special fuel supplier must have a federal certificate of registry that is issued under the Internal Revenue Code and authorizes the applicant to enter into federal tax-free transactions on special fuel in the terminal transfer system.

(6) After receipt of an application for a license, the director ((may)) shall conduct an investigation to determine whether the facts set forth are true. The director ((may)) shall require a fingerprint record check of the applicant through the Washington state patrol criminal identification system and the federal bureau

of investigation before issuance of a license. The results of the background investigation including criminal history information may be released to authorized department personnel as the director deems necessary. The department shall charge a license holder or license applicant a fee of fifty dollars for each background investigation conducted.

(7) An applicant who makes a false statement of a material fact on the application may be prosecuted for false swearing as defined by RCW 9A.72.040.

~~((No))~~ (8) A special fuel ~~((dealer's))~~ license may not be issued to any person or continued in force unless such person has furnished bond, as defined in RCW 82.38.020, in such form as the department may require, to secure his or her compliance with this chapter, and the payment of any and all taxes, interest, and penalties due and to become due hereunder. The requirement of furnishing a bond ~~((shall))~~ may be waived for special fuel ~~((dealers))~~ distributors who only deliver special fuel into the fuel tanks of marine vessels, for dyed special fuel users and for persons issued licenses under the international fuel tax agreement.

(9) The department may require a ~~((special-fuel-user))~~ licensee to post a bond if the ~~((special-fuel-user))~~ licensee, after having been licensed, has failed to file timely reports or has failed to remit taxes due, or when an investigation or audit indicates problems severe enough that the department, in its discretion, determines that a bond is required to protect the interests of the state. The department may also adopt rules prescribing conditions that, in the department's discretion, require a bond to protect the interests of the state.

(10) The total amount of the bond or bonds required of any ~~((special-fuel-dealer-or-special-fuel-user))~~ licensee shall be equivalent to three times the estimated monthly fuel tax, determined in such manner as the department may deem proper: PROVIDED, That those ~~((special-fuel-dealers))~~ licensees having held a special fuel license for five or more years without having said license suspended or revoked by the department shall be permitted to reduce the amount of their bond to twice the estimated monthly tax liability: PROVIDED FURTHER, That the total amount of the bond or bonds shall never be less than five hundred dollars nor more than ~~((fifty))~~ one hundred thousand dollars.

(11) An application for a dyed special fuel user license must be made to the department. The application must be filed upon a form prescribed by the department and contain such information as the department deems necessary.

(12) An application for an international fuel tax agreement license must be made to the department. The application must be filed upon a form prescribed by the department and contain such information as the department may require.

Sec. 64. RCW 82.38.120 and 1996 c 104 s 9 are each amended to read as follows:

Upon receipt and approval of an application and bond, if required, the department shall issue ~~((to the applicant))~~ a license to ~~((act as a special-fuel-dealer or a special-fuel-user))~~ the applicant. However, the department may refuse to issue a ~~((special-fuel-dealer's))~~ license ~~((or a special-fuel-user's license))~~ to any person:

(1) Who formerly held ~~((either type of))~~ a license issued under chapter 82.36 or 82.42 RCW or this chapter which, prior to the time of filing for application, has been revoked for cause;

(2) Who is a subterfuge for the real party in interest whose license prior to the time of filing for application, has been revoked for cause;

(3) Who, as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, has had a special fuel license revoked for cause;

(4) Who has an unsatisfied debt to the state assessed under either chapter 82.36, 82.38, ~~((or))~~ 46.87, or 82.42 RCW;

(5) Who formerly held as an individual, officer, director, owner, managing employee of a nonindividual licensee, or subterfuge for a real party in interest, a license issued by the federal government or a state that allowed a person to buy or sell untaxed motor vehicle or special fuel, which license, before the time of filing for application, has been revoked for cause;

(6) Who pled guilty to or was convicted as an individual, officer, director, owner, or managing employee of a nonindividual licensee in this or any other state or in any federal jurisdiction of a gross misdemeanor or felony crime directly related to the business or has been subject to a civil judgment involving fraud, misrepresentation, conversion, or dishonesty, notwithstanding chapter 9.96A RCW;

(7) Who misrepresented or concealed a material fact in obtaining a license or in reinstatement thereof;

(8) Who violated a statute or administrative rule regulating fuel taxation or distribution;

(9) Who failed to cooperate with the department's investigations by:

(a) Not furnishing papers or documents;

(b) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or

(c) Not responding to subpoenas issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;

(10) Who failed to comply with an order issued by the director; or

(11) Upon other sufficient cause being shown.

Before such refusal, the department shall grant the applicant a hearing and shall grant the applicant at least twenty days written notice of the time and place thereof.

The department shall determine from the information shown in the application or other investigation the kind and class of license to be issued. For the purpose of considering any application for a special fuel ~~((dealer's))~~ license, the department may inspect, cause an inspection, investigate, or cause an investigation of the records of this or any other state or of the federal government to ascertain the veracity of the information on the application form and the applicant's criminal and licensing history.

All licenses shall be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner thereof. License holders shall reproduce the license by photostat or other method and keep a copy on display for ready inspection at each additional place of business or other place of storage from which special fuel is sold, delivered or used and in each motor vehicle used by the license holder to transport special fuel purchased by him or her for resale, delivery or use. ~~((Every licensed special fuel user operating a motor vehicle registered in a jurisdiction other than this state shall reproduce the license and carry a photocopy thereof with each motor vehicle being operated upon the highways of this state.~~

~~—A special fuel dealer may use special fuel in motor vehicles owned or operated by the dealer without securing a license as a special fuel user but the dealer is subject to all other conditions, requirements, and liabilities imposed herein upon a special fuel user.))~~

Each special fuel ~~((dealer's license and special fuel user's))~~ license shall be valid until the expiration date if shown on the license, or until suspended or revoked for cause or otherwise canceled.

No special fuel ~~((dealer's license or special fuel user's))~~ license shall be transferable.

Sec. 65. RCW 82.38.130 and 1994 c 262 s 24 are each amended to read as follows:

The department may revoke the license of any ~~((special fuel dealer, or special fuel user))~~ licensee for any of the grounds constituting cause for denial of a license set forth in RCW 82.38.120 or for other reasonable cause. Before revoking such license the department shall notify the licensee to show cause within twenty days of the date of the notice why the license should not be revoked: PROVIDED, That at any time prior to and pending such bearing the department may, in the exercise of reasonable discretion, suspend such license.

The department shall cancel any ~~((license to act as a))~~ special fuel ~~((dealer, or a special fuel user))~~ licensee immediately upon surrender thereof by the holder.

Any surety on a bond furnished by a ~~((special fuel dealer or special fuel user))~~ licensee as provided ~~((herein))~~ in this chapter shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of forty-five days from the date which such surety shall have lodged with the department a written request to be released and discharged, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the forty-five day period. The department shall promptly, upon receiving any such request, notify the ~~((special fuel dealer or special fuel user))~~ licensee who furnished the bond, and unless the ~~((special fuel dealer or special fuel user shall))~~ licensee, on or before the expiration of the forty-five day period, files a new bond, in accordance with ~~((the requirements of))~~ this section, ~~((or make a deposit in lieu thereof as provided in RCW 82.38.020(11);))~~ the department forthwith shall cancel the special fuel dealer's or special fuel user's license.

The department may require a ~~((special fuel dealer or special fuel user to give a))~~ new or additional surety bond ~~((or to deposit additional securities))~~ of the character specified in RCW 82.38.020~~((+))~~ (3) if, in its opinion, the security of the surety bond therefor filed by such ~~((special fuel dealer or special fuel user, or the market value of the properties deposited as security by such special fuel dealer or special fuel user))~~ licensee, shall become impaired or inadequate. Upon failure of the ~~((special fuel dealer or special fuel user))~~ licensee to give such new or additional surety bond ~~((or to deposit additional securities))~~ within forty-five days after being requested to do so by the department, or after he or she shall fail or refuse to file reports and remit or pay taxes at the intervals fixed by the department, the department forthwith shall cancel his or her license.

Sec. 66. RCW 82.38.140 and 1996 c 104 s 10 and 1996 c 90 s 2 are each reenacted and amended to read as follows:

(1) Every ~~((special fuel dealer, special fuel user;))~~ licensee and every person importing, manufacturing, refining, dealing in, transporting, blending, or storing special fuel in this state shall keep for a period of not less than five years open to inspection at all times during the business hours of the day to the department or its authorized representatives, a complete record of all special fuel purchased or received and all of such products sold, delivered, or used by them. Such records shall show:

- (a) The date of each receipt;
- (b) The name and address of the person from whom purchased or received;
- (c) The number of gallons received at each place of business or place of storage in the state of Washington;
- (d) The date of each sale or delivery;
- (e) The number of gallons sold, delivered, or used for taxable purposes;
- (f) The number of gallons sold, delivered, or used for any purpose not subject to the tax imposed ~~((herein))~~ in this chapter;
- (g) The name, address, and special fuel license number of the purchaser if the special fuel tax is not collected on the sale or delivery;
- (h) The inventories of special fuel on hand at each place of business at the end of each month.

(2)(a) All ~~((special fuel users using special fuel))~~ international fuel tax agreement licensees and dyed special fuel users authorized to use dyed special fuel on highway in vehicles licensed for highway operation shall maintain detailed mileage records on an individual vehicle basis.

(b) Such operating records shall show both on-highway and off-highway usage of special fuel on a daily basis for each vehicle.

(c) In the absence of operating records that show both on-highway and off-highway usage of special fuel on a daily basis for each vehicle, fuel consumption must be computed under RCW 82.38.060.

(3) ~~((Persons using special fuel for heating purposes only are not required to maintain records of fuel usage:))~~

— (4) Invoices shall be prepared for sales and deliveries of special fuel in the manner and containing such information as may be prescribed by the department.

— Every special fuel dealer or special fuel user making such sales or deliveries of special fuel and every person so receiving and purchasing special fuel must each retain one copy of each such invoice as part of the dealer's permanent records for the time and purposes above provided.

— (5) Every special fuel user shall keep, in addition to the dealer's records of deliveries into motor vehicles, a complete record as prescribed by the department of the total gallons of special fuel used for other purposes during each month and the purposes for which said special fuel was used.

— (6) Subsections (1)(f), (2)(b), and (5) of this section do not apply to special fuel users when the special fuel is used off-highway in farming, construction, or logging operations. Upon filing a special fuel user tax report, every such special fuel user shall certify and bear the burden of proof as to the number of gallons of special fuel used off-highway.) The department may require a person other than a licensee engaged in the business of selling, purchasing, distributing, storing, transporting, or delivering special fuel to submit periodic reports to the department regarding the disposition of the fuel. The reports must be on forms prescribed by the department and must contain such information as the department may require.

(4) Every person operating any conveyance for the purpose of hauling, transporting, or delivering special fuel in bulk shall have and possess during the entire time the person is hauling special fuel, an invoice, bill of sale, or other statement showing the name, address, and license number of the seller or consignor, the destination, name, and address of the purchaser or consignee, license number, if applicable, and the number of gallons. The person hauling such special fuel shall at the request of any law enforcement officer or authorized representative of the department, or other person authorized by law to inquire into, or investigate those types of matters, produce for inspection such invoice, bill of sale, or other statement and shall permit such official to inspect and gauge the contents of the vehicle.

Sec. 67. RCW 82.38.150 and 1996 c 104 s 11 are each amended to read as follows:

For the purpose of determining the amount of liability for the tax herein imposed, and to periodically update license information, each ((special fuel dealer and each)) licensee, other than a special fuel distributor, an international fuel tax agreement licensee, or a dyed special fuel user, shall file monthly tax reports with the department, on forms prescribed by the department. ((Special fuel dealers shall file the reports at the intervals as shown in the following schedule:

| Estimated Yearly Tax Liability | Reporting Frequency |
|--------------------------------|---------------------|
| \$ 0 - \$100                   | Yearly              |
| \$101 - 250                    | Semi-yearly         |

|                           |                      |
|---------------------------|----------------------|
| <del>\$251 - 499</del>    | <del>Quarterly</del> |
| <del>\$500 and over</del> | <del>Monthly</del>   |

Dyed special fuel users whose estimated yearly tax liability is two hundred fifty dollars or less, shall file a report yearly, and dyed special fuel users whose estimated yearly tax liability is more than two hundred fifty dollars, shall file reports quarterly. Special fuel users licensed under the international fuel tax agreement shall file reports quarterly. Special fuel distributors subject to the pollution liability insurance agency fee and reporting requirements shall remit pollution liability insurance agency returns and any associated payment due to the department annually.

The department shall establish the reporting frequency for each applicant at the time the special fuel license is issued. If it becomes apparent that any ((special fuel)) licensee is not reporting in accordance with the above schedule, the department shall change the licensee's reporting frequency by giving thirty days' notice to the licensee by mail to the licensee's address of record. A report shall be filed with the department even though no special fuel was used, or tax is due, for the reporting period. Each tax report shall contain a declaration by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the report and is in lieu of such verification. The report shall show such information as the department may reasonably require for the proper administration and enforcement of this chapter. For counties within which an additional excise tax on special fuel has been levied by that jurisdiction under RCW 82.80.010, the report must show the quantities of special fuel sold, distributed, or withdrawn from bulk storage by the reporting dealer or user within the county's boundaries and the tax liability from its levy. ((The special fuel dealer or special fuel user)) A licensee shall file ((the)) a tax report on or before the twenty-fifth day of the next succeeding calendar month following the period to which it relates.

Subject to the written approval of the department, tax reports may cover a period ending on a day other than the last day of the calendar month. Taxpayers granted approval to file reports in this manner will file such reports on or before the twenty-fifth day following the end of the reporting period. No change to this reporting period will be made without the written authorization of the department.

If the final filing date falls on a Saturday, Sunday, or legal holiday the next secular or business day shall be the final filing date. Such reports shall be considered filed or received on the date shown by the post office cancellation mark stamped upon an envelope containing such report properly addressed to the department, or on the date it was mailed if proof satisfactory to the department is available to establish the date it was mailed.

The department, if it deems it necessary in order to insure payment of the tax imposed by this chapter, or to facilitate the administration of this chapter, has the authority to require the filing of reports and tax remittances at shorter intervals than one month if, in its opinion, an existing bond has become insufficient.



~~((The department may permit any special fuel user whose sole use of special fuel is in motor vehicles or equipment exempt from tax as provided in RCW 82.38.075 and 82.38.080 (1), (2), (3), (8), and (9), in lieu of the reports required in this section, to submit reports annually or as requested by the department, in such form as the department may require.~~

~~— A special fuel user whose sole use of special fuel is for purposes other than the propulsion of motor vehicles upon the public highways of this state shall not be required to submit the reports required in this section.)~~

Sec. 68. RCW 82.38.160 and 1987 c 174 s 5 are each amended to read as follows:

(1) The tax imposed by this chapter shall be computed ~~((as follows: (a) With respect to special fuel upon which the tax has been collected by the seller thereof as a special fuel dealer,))~~ by multiplying the tax rate per gallon provided in this chapter by the number of gallons of special fuel ~~((delivered))~~ subject to the special fuel tax ~~((; (b) with respect to special fuel on which the tax has not been paid to a special fuel dealer in this state and which has been consumed by the purchaser thereof as a special fuel user, by multiplying the tax rate per gallon provided in this chapter by the number of gallons of special fuel consumed by him in the propulsion of a motor vehicle on the highways of this state)).~~

(2) A special fuel distributor shall remit tax on special fuel purchased from a special fuel supplier, and due to the state for that reporting period, to the special fuel supplier.

(3) At the election of the distributor, the payment of the special fuel tax owed on special fuel purchased from a supplier shall be remitted to the supplier on terms agreed upon between the distributor and the supplier or no later than two business days before the last business day of the following month. This election shall be subject to a condition that the distributor's remittances of all amounts of special fuel tax due to the supplier shall be paid by electronic funds transfer. The distributor's election may be terminated by the supplier if the distributor does not make timely payments to the supplier as required by this section. This section shall not apply if the distributor is required by the supplier to pay cash or cash equivalent for special fuel purchases.

(4) Except as provided in subsection ~~((3))~~ (5) of this section, the tax return shall be accompanied by a remittance payable to the state treasurer covering the tax ~~((moneys collected by the special fuel dealer or the))~~ amount determined to be due ~~((hereunder by licensed users of special fuels during))~~ for the ~~((preceding))~~ reporting period.

~~((3))~~ (5) If the tax is paid by electronic funds transfer ~~((and the reporting period ends on the last day of a calendar month)),~~ the tax shall be paid on or before the ~~((state business day immediately preceding the last state business day of the month following the end of))~~ tenth calendar day of the month that is the second month immediately following the reporting period. When the reporting period is May, the tax shall be paid on the last state business day of June. If the tax is paid by electronic funds transfer and the reporting period ends on a day

other than the last day of a calendar month as provided in RCW 82.38.150, the tax shall be paid on or before ~~((the state business day immediately preceding))~~ the last state business day of the thirty-day period following the end of the reporting period.

~~((4))~~ (6) The tax shall be paid by electronic funds transfer whenever the amount due is fifty thousand dollars or more.

**NEW SECTION. Sec. 69.** A special fuel supplier shall, no later than the twentieth day or next business day after the special fuel tax is due from the special fuel distributor under RCW 82.38.160(2), notify the department of the failure of a special fuel distributor to pay the full amount of the tax owed.

Upon notification and submission of satisfactory evidence by a special fuel supplier that a special fuel distributor has failed to comply with RCW 82.38.160(2), the department may suspend the license of the special fuel distributor.

Upon the suspension, the department shall immediately notify all special fuel suppliers that the authority of the special fuel distributor to purchase tax-deferred special fuel has been suspended and all subsequent purchases of special fuel by the special fuel distributor must be tax-paid at the time of removal.

If, after notification by the department, a special fuel supplier continues to sell tax-deferred special fuel to a special fuel distributor whose license is suspended, the special fuel supplier's license is subject to revocation or suspension under RCW 82.38.130. Furthermore, if notified of a license suspension, a special fuel supplier is liable for any unpaid special fuel tax owed on special fuel sold to a suspended special fuel distributor.

**Sec. 70.** RCW 82.38.170 and 1996 c 104 s 12 are each amended to read as follows:

(1) If any ~~((special fuel dealer or special fuel user))~~ licensee fails to pay any taxes collected or due the state of Washington ~~((by said dealer or user))~~ within the time prescribed by RCW 82.38.150 and 82.38.160, ~~((said dealer or user))~~ the licensee shall pay in addition to such tax a penalty of ten percent of the amount thereof.

(2) If it be determined by the department that the tax reported by any ~~((special fuel dealer or special fuel user))~~ licensee is deficient it may proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency a penalty of ten percent of the amount of the deficiency.

(3) If any ~~((special fuel dealer or special fuel user))~~ licensee, whether or not he or she is licensed as such, fails, neglects, or refuses to file a special fuel tax report required under this chapter, the department may, on the basis of information available to it, determine the tax liability of the ~~((special fuel dealer or the special fuel user))~~ licensee for the period during which no report was filed, and to the tax as thus determined, the department shall add the penalty and interest provided in subsection (2) of this section. An assessment made by the department pursuant to this subsection or to subsection (2) of this section shall be

presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be.

(4) If any (~~special fuel dealer or special fuel user shall~~) licensee establishes by a fair preponderance of evidence that his or her failure to file a report or pay the proper amount of tax within the time prescribed was due to reasonable cause and was not intentional or willful, the department may waive the penalty prescribed in subsections (1), (2), and (3) of this section.

(5) If any (~~special fuel dealer or special fuel user shall~~) licensee files a false or fraudulent report with intent to evade the tax imposed by this chapter, there shall be added to the amount of deficiency determined by the department a penalty equal to twenty-five percent of the deficiency, in addition to the penalty provided in subsection (2) of this section and all other penalties prescribed by law.

(6) Any special fuel tax, penalties, and interest payable under this chapter shall bear interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the amount or any portion thereof should have been paid until the date of payment: PROVIDED, That the department may waive the interest when it determines that the cost of processing the collection of the interest exceeds the amount of interest due.

(7) Except in the case of violations of filing a false or fraudulent report, if the department deems mitigation of penalties and interest to be reasonable and in the best interests of carrying out the purpose of this chapter, it may mitigate such assessments upon whatever terms the department deems proper, giving consideration to the degree and extent of the lack of records and reporting errors. The department may ascertain the facts regarding recordkeeping and payment penalties in lieu of more elaborate proceedings under this chapter.

(8) Except in the case of a fraudulent report or of neglect or refusal to make a report, every deficiency shall be assessed under subsection (2) of this section within five years from the twenty-fifth day of the next succeeding calendar month following the reporting period for which the amount is proposed to be determined or within five years after the return is filed, whichever period expires the later.

(9) Any (~~special fuel dealer or special fuel user~~) licensee against whom an assessment is made under the provisions of subsections (2) or (3) of this section may petition for a reassessment thereof within thirty days after service upon the (~~special fuel dealer or special fuel user~~) licensee of notice thereof. If such petition is not filed within such thirty day period, the amount of the assessment becomes final at the expiration thereof.

If a petition for reassessment is filed within the thirty day period, the department shall reconsider the assessment and, if the (~~special fuel dealer or special fuel user~~) licensee has so requested in his or her petition, shall grant such (~~special fuel dealer or special fuel user~~) licensee an oral hearing and give the (~~special fuel dealer or special fuel user~~) licensee ten days' notice of the time and place thereof. The department may continue the hearing from time to time. The

decision of the department upon a petition for reassessment shall become final thirty days after service upon the ~~((special fuel dealer or special fuel user))~~ licensee of notice thereof.

Every assessment made by the department shall become due and payable at the time it becomes final and if not paid to the department when due and payable, there shall be added thereto a penalty of ten percent of the amount of the tax.

(10) Any notice of assessment required by this section shall be served personally or by certified or registered mail; if by mail, service shall be made by depositing such notice in the United States mail, postage prepaid addressed to the ~~((special fuel dealer or special fuel user))~~ licensee at his or her address as the same appears in the records of the department.

(11) Any licensee who has had ~~((either their))~~ the licensee's special fuel ~~((user))~~ license ~~((or special fuel dealer license, or both,))~~ revoked shall pay a one hundred dollar penalty prior to the issuance of a new license.

(12) Any person who, upon audit or investigation by the department, is found to have not paid special fuel taxes as required by this chapter shall be subject to cancellation of all vehicle registrations for vehicles utilizing special fuel as a means of propulsion. Any unexpired Washington tonnage on the vehicles in question may be transferred to a purchaser of the vehicles upon application to the department who shall hold such tonnage in its custody until a sale of the vehicle is made or the tonnage has expired.

(13) Unless expressly authorized by the Internal Revenue Code and this chapter, a person using dyed special fuel in the propulsion of a motor vehicle upon the highways of this state is subject to a civil penalty of ten dollars for each gallon of dyed special fuel placed into the supply tank of the motor vehicle, or one thousand dollars, whichever is greater. The civil penalty collected as a result of this subsection must be deposited in the motor vehicle fund. The penalties must be collected and administered under this chapter.

(14) For the purposes of enforcement of this section, the Washington state patrol or other commercial vehicle safety alliance-certified officers may inspect, collect, and secure samples of special fuel used in the propulsion of a vehicle operated upon the highways of this state to detect the presence of dye or other chemical compounds.

(15) The Washington state patrol shall, by January 1, 1999, develop and implement procedures for collection, analysis, and storage of fuel samples collected under this chapter.

(16) RCW 43.05.110 does not apply to the civil penalties imposed under subsection (13) of this section.

Sec. 71. RCW 82.38.180 and 1972 ex.s. c 138 s 4 are each amended to read as follows:

Any person who has paid a special fuel tax either directly or to the vendor from whom it was purchased may file a claim with the department for a refund of the tax so paid and shall be reimbursed and repaid the amount of:

(1) Any taxes previously paid on special fuel used for purposes other than for the propulsion of motor vehicles upon the public highways in this state.

(2) Any taxes previously paid on special fuel exported for use outside of this state. Special fuel carried from this state in the fuel tank of a motor vehicle is deemed to be exported from this state. Special fuel distributed to a federally recognized Indian tribal reservation located within the state of Washington is not considered exported outside this state.

(3) Any tax, penalty, or interest erroneously or illegally collected or paid.

(4) Any taxes previously paid on all special fuel which is lost or destroyed, while applicant shall be the owner thereof, through fire, lightning, flood, wind storm, or explosion.

(5) Any taxes previously paid on all special fuel of five hundred gallons or more which is lost or destroyed while applicant shall be the owner thereof, through leakage or other casualty except evaporation, shrinkage, or unknown causes.

(6) Any taxes previously paid on special fuel that is inadvertently mixed with dyed special fuel.

Recovery for such loss or destruction under either subsection (4) ~~((or))~~, (5), or (6) of this section must be susceptible to positive proof thereby enabling the department to conduct such investigation and require such information as they may deem necessary. In the event that the department is not satisfied that the fuel was lost ~~((or))~~, destroyed, or contaminated as claimed because information or proof as required hereunder is not sufficient to substantiate the accuracy of the claim, they may deem such as sufficient cause to deny all right relating to the refund or credit for the excise tax paid on special fuel alleged to be lost or destroyed.

No refund or claim for credit shall be approved by the department unless the gallons of special fuel claimed as nontaxable satisfy the conditions specifically set forth in this section and the nontaxable event or use occurred during the period covered by the refund claim. Refunds or claims for credit by sellers or users of special fuel shall not be allowed for anticipated nontaxable use or events.

**NEW SECTION. Sec. 72.** (1) Upon application, the department may give special authorization to farmers, logging companies, and construction companies to purchase nondyed special fuel directly into the supply tanks of nonhighway equipment or into portable slip tanks for nonhighway use without payment of the special fuel tax. Purchases of this nondyed special fuel must be made at a card lock facility owned and operated by a special fuel distributor who is required to pay the special fuel tax on nondyed special fuel delivered to the card lock facility and has elected to sell the special fuel in this manner. The election is solely at the discretion of the special fuel distributor and must be approved by the department.

(2) A special fuel distributor who has paid the special fuel tax on nondyed special fuel purchased by a holder of a special authorization may file a claim for refund of the special fuel tax paid. A claim for refund of the special fuel tax paid under this section is allowed only if all the following apply:

(a) Special fuel tax was paid by the distributor on the nondyed special fuel to which the claim relates and the claim is supported by an invoice or invoices showing such payment;

(b) The special fuel distributor sold the special fuel to a holder of a valid special authorization issued by the department;

(c) The claim contains the name and special authorization number of each purchaser and the number of gallons sold to the purchaser;

(d) The claim contains a statement that the special fuel distributor has not included the amount of the tax in the sale price of the nondyed special fuel and has not collected the special fuel tax from the purchaser; and

(e) The claim contains a statement that the special fuel covered by the claim did not contain visible evidence of dye.

(3) Each claim for refund under this section must be made on a form prescribed by the department and must be for a period of not less than one week.

(4) The department may terminate the election of a special fuel distributor if the special fuel distributor fails to comply with this section.

(5) The department shall require a holder of a special authorization to submit a request at least once every two years for renewal of the special authorization upon forms supplied by the department. The department shall prescribe the information to be submitted by the special authorization holder and shall determine whether the special authorization shall continue.

(6) For any special fuel purchased under this special authorization, a special authorization holder shall retain records required under RCW 82.38.190 for refund submittals for three years following the purchase date of the fuel.

(7) Notwithstanding the special provisions provided under this section, the special authorization holder is subject to all provisions of this chapter that apply to refund claims.

**NEW SECTION.** Sec. 73. A licensee, other than a special fuel exporter, is entitled to a refund of the special fuel tax previously paid on special fuel which has been purchased from the licensee by a person who is exempt from payment of the special fuel tax imposed by this chapter. Application for the refund shall be accompanied by an invoice or proof satisfactory to the department documenting each sale wherein the purchaser was exempt from the special fuel tax. Claims for refunds shall be made under this chapter.

**Sec. 74.** RCW 82.38.190 and 1997 c 183 s 10 are each amended to read as follows:

(1) Claims under RCW 82.38.180 shall be filed with the department on forms prescribed by the department and shall show the date of filing and the period covered in the claim, the number of gallons of special fuel used for purposes subject to tax refund, and such other facts and information as may be required. Every such claim shall be supported by an invoice or invoices issued to or by the claimant, as may be prescribed by the department, and such other information as the department may require. The requirement to provide invoices may be waived

for small refund amounts, as determined by the department. Claims for refund of special fuel tax must be for at least twenty dollars.

(2) Any amount determined to be refundable by the department under RCW 82.38.180 shall first be credited on any amounts then due and payable from ~~((the special fuel dealer or special fuel user or to any))~~ a person to whom the refund is due, and the department shall then certify the balance thereof to the state treasurer, who shall thereupon draw his or her warrant for ~~((such))~~ the certified amount to ~~((such special fuel dealer or special fuel user or any))~~ the person.

(3) No refund or credit shall be approved by the department unless a written claim for refund or credit stating the specific grounds upon which the claim is founded is filed with the department:

(a) Within thirteen months from the date of purchase or from the last day of the month following the close of the reporting period for which the refundable amount or credit is due with respect to refunds or credits allowable under RCW 82.38.180~~((subsections))~~ (1), (2), (4), and (5), and if not filed within this period the right to refund shall be forever barred.

(b) Within ~~((three))~~ five years from the last day of the month following the close of the reporting period for which the overpayment is due with respect to the refunds or credits allowable under RCW 82.38.180(3). The department shall refund any amount paid that has been verified by the department to be more than ten dollars over the amount actually due for the reporting period. Payment credits shall not be carried forward and applied to subsequent tax returns for a person licensed under this chapter.

(4) Within thirty days after disallowing any claim in whole or in part, the department shall serve written notice of its action on the claimant.

(5) Interest shall be paid upon any refundable amount or credit due under RCW 82.38.180(3) at the rate of one percent per month from the last day of the calendar month following the reporting period for which the refundable amount or credit is due.

The interest shall be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he or she has not already filed a claim, is notified by the department that a claim may be filed or the date upon which the claim is approved by the department, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

If the department determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

(6) The department shall pay interest of one percent on any refund payable under RCW 82.38.180 (1), (2), or (6) that is issued more than thirty state business days after the receipt of a claim properly filed and completed in accordance with this section. After the end of the thirty business-day period, additional interest shall accrue at the rate of one percent on the amount payable for each thirty calendar-day period, until the refund is issued.

(7) No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against this state or against any officer of the state to prevent or enjoin the collection under this chapter of any tax or any amount of tax required to be collected.

Sec. 75. RCW 82.38.210 and 1979 c 40 s 15 are each amended to read as follows:

If any (~~special fuel dealer, supplier, or user~~) licensee liable for the remittance of tax imposed by this chapter fails to pay the same, the amount thereof, including any interest, penalty, or addition to such tax, together with any costs that may accrue in addition thereto, shall be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, then belonging to or thereafter acquired by such person, whether such property is employed by such person for personal or business use or is in the hands of a trustee, or receiver, or assignee for the benefit of creditors, from the date the taxes were due and payable, until the amount of the lien is paid or the property sold in payment thereof. The lien shall have priority over any lien or encumbrance whatsoever, except the lien of other state taxes having priority by law, and except that such lien shall not be valid as against any bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the time the department has filed and recorded notice of such lien as hereinafter provided.

In order to avail itself of the lien hereby created, the department shall file with any county auditor a statement of claim and lien specifying the amount of delinquent taxes, penalties and interest claimed by the department. From the time of filing for record, the amount required to be paid shall constitute a lien upon all franchises, property and rights to property, whether real or personal, then belonging to or thereafter acquired by such person in the county. Any lien as provided in this section may also be filed in the office of the secretary of state. Filing in the office of the secretary of state shall be of no effect, however, until the lien or copy thereof shall have been filed with the county auditor in the county where the property is located. When a lien is filed in compliance herewith and with the secretary of state, such filing shall have the same effect as if the lien had been duly filed for record in the office of the auditor in each county of this state.

Sec. 76. RCW 82.38.220 and 1994 c 262 s 26 are each amended to read as follows:

In the event any (~~special fuel user or special fuel dealer~~) licensee is delinquent in the payment of any obligation imposed under this chapter, the department may give notice of the amount of such delinquency by registered or certified mail to all persons having in their possession or under their control any credits or other personal property belonging to (~~such user or dealer~~) the licensee or owing any debts to (~~such user or dealer~~) the licensee, at the time of the receipt by them of such notice. Any person so notified shall neither transfer nor make other disposition of such credits, personal property, or debts until the department consents to a transfer or other disposition. All persons so notified



must, within twenty days after receipt of the notice, advise the department of any and all such credits, personal property, or debts in their possession, under their control or owing by them, as the case may be, and shall immediately deliver such credits, personal property, or debts to the department or its duly authorized representative to be applied to the indebtedness involved.

Upon service, the notice and order to withhold and deliver constitutes a continuing lien on property of the taxpayer. The department shall include in the caption of the notice to withhold and deliver "continuing lien." The effective date of a notice to withhold and deliver served under this section is the date of service of the notice.

If a person fails to answer the notice within the time prescribed by this section, it is lawful for the court, upon application of the department and after the time to answer the notice has expired, to render judgment by default against the party named in the notice to withhold and deliver for the full amount claimed by the department in the notice to withhold and deliver, together with costs.

**Sec. 77.** RCW 82.38.230 and 1979 c 40 s 17 are each amended to read as follows:

Whenever any (~~special fuel user, supplier or dealer~~) licensee is delinquent in the payment of any obligation imposed hereunder, and such delinquency continues after notice and demand for payment by the department, the department shall proceed to collect the amount due from the (~~user, supplier or dealer~~) licensee in the following manner: The department shall seize any property subject to the lien of said excise tax, penalty, and interest and thereafter sell it at public auction to pay said obligation and any and all costs that may have been incurred on account of the seizure and sale. Notice of such intended sale and the time and place thereof shall be given to such delinquent (~~user, supplier or dealer~~) licensee and to all persons appearing of record to have an interest in such property. The notice shall be given in writing at least ten days before the date set for the sale by enclosing it in an envelope addressed to (~~such user, supplier or dealer~~) the licensee at (~~his~~) the licensee's address as the same appears in the records of the department and, in the case of any person appearing of record to have an interest in such property, addressed to such person at his or her last known residence or place of business, and depositing such envelope in the United States mail, postage prepaid. In addition, the notice shall be published for at least ten days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in such county, the notice shall be posted in three public places in the county for a period of ten days. The notice shall contain a description of the property to be sold, together with a statement of the amount due (~~hereunder~~) under this chapter, the name of the (~~user, supplier or dealer~~) licensee and the further statement that unless such amount is paid on or before the time fixed in the notice the property will be sold in accordance with law.

The department shall then proceed to sell the property in accordance with the law and the notice, and shall deliver to the purchaser a bill of sale or deed which

shall vest title in the purchaser. If upon any such sale the moneys received exceed the amount due to the state (~~hereunder~~) under this chapter from the delinquent (~~user, supplier or dealer~~) licensee, the excess shall be returned to (~~such user, supplier or dealer~~) the licensee and (~~his~~) the licensee's receipt obtained (~~therefor~~) for the excess. If any person having an interest in or lien upon the property has filed with the department prior to such sale, notice of such interest or lien, the department shall withhold payment of any such excess to (~~such user, supplier or dealer~~) the licensee pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of (~~such user, supplier or dealer shall not be~~) the licensee is not available, the department shall deposit such excess with the state treasurer as trustee for (~~such user, supplier or dealer, his~~) the licensee or the licensee's heirs, successors, or assigns: PROVIDED, That prior to making any seizure of property as (~~herein~~) provided for in this section, the department may first serve upon the (~~user's, supplier's, or dealer's~~) licensee's bondsman a notice of the delinquency, with a demand for the payment of the amount due.

**Sec. 78.** RCW 82.38.235 and 1979 c 40 s 22 are each amended to read as follows:

Whenever any assessment shall have become final in accordance with the provisions of this chapter, the department may file with the clerk of any county within the state a warrant in the amount of the assessment of taxes, penalties plus interest and a filing fee of five dollars. The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the (~~special fuel user, supplier or dealer~~) licensee mentioned in the warrant, the amount of the tax, penalties, interest and filing fee and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of named person against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. Such warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of civil judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee of five dollars, which shall be added to the amount of the warrant.

**Sec. 79.** RCW 82.38.240 and 1971 ex.s. c 175 s 25 are each amended to read as follows:

Whenever any (~~special fuel user or special fuel dealer~~) licensee is delinquent in the payment of any obligation hereunder the department may transmit notice of such delinquency to the attorney general who shall at once proceed to collect by appropriate legal action the amount due the state from (~~such user or dealer~~) the licensee. In any suit brought to enforce the rights of the state hereunder, a certificate by the department showing the delinquency shall be

prima facie evidence of the amount of the obligation, of the delinquency thereof and of compliance by the department with all provisions of this chapter relating to such obligation.

**Sec. 80.** RCW 82.38.260 and 1995 c 274 s 25 are each amended to read as follows:

The department shall enforce the provisions of this chapter, and may prescribe, adopt, and enforce reasonable rules and regulations relating to the administration and enforcement thereof. The Washington state patrol and its officers shall aid the department in the enforcement of this chapter, and, for this purpose, are declared to be peace officers, and given police power and authority throughout the state to arrest on sight any person known to have committed a violation of the provisions of this chapter.

The department or its authorized representative is hereby empowered to examine the books, papers, records and equipment of any (~~special fuel dealer, special fuel user,~~) licensee or any person dealing in, transporting, or storing special fuel as defined in this chapter and to investigate the character of the disposition which any person makes of such special fuel in order to ascertain and determine whether all taxes due hereunder are being properly reported and paid. The fact that such books, papers, records and equipment are not maintained in this state at the time of demand shall not cause the department to lose any right of such examination under this chapter when and where such records become available.

The department or its authorized representative is further empowered to investigate the disposition of special fuel by any person where the department has reason to believe that untaxed special fuel has been diverted to a use subject to the taxes imposed by this chapter without said taxes being paid in accordance with the requirements of this chapter.

For the purpose of enforcing the provisions of this chapter it shall be presumed that all special fuel delivered to service stations as well as all special fuel otherwise received (~~by a special fuel dealer or a special fuel user~~) into storage and dispensing equipment designed to fuel motor vehicles is delivered (~~by the special fuel dealer or special fuel user~~) into the fuel supply tanks of motor vehicles and consumed in the propulsion of motor vehicles on the highways of this state, unless the contrary is established by satisfactory evidence.

The department shall, upon request from the officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, the provinces or the Dominion of Canada, forward to such officials any information which he or she may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any (~~special fuel dealer or special fuel user, provided such~~) licensee if the other state or states furnish like information to this state.

Returns required by this chapter, exclusive of schedules, itemized statements and other supporting evidence annexed thereto, shall at all reasonable times be open to the public.

**NEW SECTION. Sec. 81.** It is intended that the ultimate liability for the tax imposed under this chapter be upon the user, regardless of the manner in which collection of the tax is provided for in this chapter. However, this section does not apply to agreements between the department and federally recognized Indian tribes entered into under RCW 82.38.310, nor does it apply to the consent decrees entered in *Confederated Tribes of the Colville Reservation v. Washington Department of Licensing*, No. CS-92-248-JLQ (E.D. Wash.) and *Teo v. Steffenson*, No. CY-93-3050-AAM (E.D. Wash.).

**NEW SECTION. Sec. 82.** A special fuel distributor who incurs liability in December 1998 for the special fuel tax imposed under this chapter shall report the liability and pay the tax in January 1999 in the manner required by this chapter as it existed before January 1, 1999.

A special fuel distributor or special fuel user shall inventory all special fuel, including dyed special fuel, that is on hand or in the person's possession as of 12:01 a.m. on January 1, 1999, and is not in the bulk transfer-terminal system and shall report the results of the inventory to the department no later than the last business day of February 1999. The report of inventory must be made on a form prescribed by the department.

A special fuel distributor may pay the tax due on special fuel in inventory any time before February 28, 2000, but at least one-twelfth of the amount due must be paid by the last day of each month starting with February 1999. Payments not received in accordance with this section are late and are subject to the interest and penalty provisions of this chapter. Payments made after February 2000 are late and are subject to the interest and penalty provisions of this chapter.

A special fuel user shall pay the tax due on fuel in inventory in accordance with the filing frequency assigned to the user before the effective date of this section. Payments not received in accordance with the filing frequency are late and are subject to the interest and penalty provisions of this chapter.

**NEW SECTION. Sec. 83.** (1) An international fuel tax agreement licensee who meets the qualifications in subsection (2) of this section may be given special authorization by the department to purchase special fuel delivered into bulk storage without payment of the special fuel tax at the time the fuel is purchased. The special authorization applies only to full truck-trailer loads filled at a terminal rack and delivered directly to the bulk storage facilities of the special authorization holder. The licensee shall pay special fuel tax on the fuel at the time the licensee files their international fuel tax agreement tax return and accompanying schedule with the department. The accompanying schedule shall be provided in a form and manner determined by the department and shall contain information on purchases and usage of all nondyed special fuel purchased during the reporting period. In addition, by the fifteenth day of the month following the month in which fuel under the special authorization was purchased, the licensee must report to the department, the name of the seller and the number of gallons

purchased for each purchase of such fuel, and any other information as the department may require.

(2) To receive or maintain special authorization under subsection (1) of this section, the following conditions regarding the international fuel tax agreement licensee must apply:

(a) During the period encompassing the four consecutive calendar quarters immediately preceding the fourth calendar quarter of the previous year, the number of gallons consumed outside the state of Washington as reported on the licensee's international fuel tax agreement tax returns must have been equal to at least twenty percent of the nondyed special fuel gallons, including fuel used on-road and off-road, purchased by the licensee in the state of Washington, as reported on the accompanying schedules required under subsection (1) of this section;

(b) The licensee must have been licensed under the provisions of the international fuel tax agreement during each of the four consecutive calendar quarters immediately preceding the fourth calendar quarter of the previous year; and

(c) The licensee has not violated the reporting requirements of this section.

(3) A special fuel distributor who sells special fuel under the special authorization provisions of this section is not liable for the special fuel tax on the fuel. By the fifteenth day of the month following the month in which the fuel was sold, the special fuel distributor shall report to the department, the name and special authorization number of the purchaser and the number of gallons sold for each purchase of such special fuel, and any other information as the department may require. The special fuel supplier will report such sales, in a manner prescribed by the department, at the time the special fuel supplier submits the monthly tax report.

(4) A supplier selling special fuel under the provisions of this section shall not be responsible for taxes due for special fuel purchased under the provisions of this section.

(5) An international fuel tax agreement licensee who qualifies for a special authorization under this section for calendar year 1999 is not subject to the special fuel user requirements of section 82 of this act.

**Sec. 84.** RCW 43.05.110 and 1995 c 403 s 612 are each amended to read as follows:

The department of agriculture, fish and wildlife, health, licensing, or natural resources may issue a civil penalty provided for by law without first issuing a notice of correction if: (1) The person has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule or has been given previous notice of the same or similar type of violation of the same statute or rule; or (2) compliance is not achieved by the date established by the department in a previously issued notice of correction, if the department has responded to any request for review of such date by reaffirming the original date or establishing a new date; (3) the violation has a probability of

placing a person in danger of death or bodily harm, has a probability of causing more than minor environmental harm, or has a probability of causing physical damage to the property of another in an amount exceeding one thousand dollars; or (4) the violation was committed by a business that employed fifty or more employees on at least one day in each of the preceding twelve months. In addition, the department of fish and wildlife may issue a civil penalty provided for by law without first issuing a notice of correction for a violation of any rule dealing with seasons, catch or bag limits, gear types, or geographical areas for fish or wildlife removal, reporting, or disposal.

This section does not apply to the civil penalties imposed under RCW 82.38.170(13).

**Sec. 85.** RCW 82.47.010 and 1991 c 173 s 2 are each amended to read as follows:

The definitions set forth in this section shall apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Motor vehicle fuel" has the meaning given in RCW 82.36.010(~~((2))~~).
- (2) "Special fuel" has the meaning given in RCW 82.38.020(~~((5))~~).
- (3) "Motor vehicle" has the meaning given in RCW 82.36.010(~~((1))~~).

**Sec. 86.** RCW 82.80.010 and 1991 c 339 s 12 are each amended to read as follows:

(1) Subject to the conditions of this section, any county may levy, by approval of its legislative body and a majority of the registered voters of the county voting on the proposition at a general or special election, additional excise taxes equal to ten percent of the state-wide motor vehicle fuel tax rate under RCW 82.36.025 on each gallon of motor vehicle fuel as defined in RCW 82.36.010(~~((2))~~) and on each gallon of special fuel as defined in RCW 82.38.020(~~((5))~~) sold within the boundaries of the county. Vehicles paying an annual license fee under RCW 82.38.075 are exempt from the county fuel excise tax. An election held under this section must be held not more than twelve months before the date on which the proposed tax is to be levied. The ballot setting forth the proposition shall state the tax rate that is proposed. The county's authority to levy additional excise taxes under this section includes the incorporated and unincorporated areas of the county. The additional excise taxes are subject to the same exceptions and rights of refund as applicable to other motor vehicle fuel and special fuel excise taxes levied under chapters 82.36 and 82.38 RCW. The proposed tax shall not be levied less than one month from the date the election results are certified by the county election officer. The commencement date for the levy of any tax under this section shall be the first day of January, April, July, or October.

(2) Every person subject to the tax shall pay, in addition to any other taxes provided by law, an additional excise tax to the director of licensing at the rate levied by a county exercising its authority under this section.

(3) The state treasurer shall distribute monthly to the levying county and cities contained therein the proceeds of the additional excise taxes collected under this section, after the deductions for payments and expenditures as provided in RCW 46.68.090 (1) and (2) and under the conditions and limitations provided in RCW 82.80.080.

(4) The proceeds of the additional excise taxes levied under this section shall be used strictly for transportation purposes in accordance with RCW 82.80.070.

(5) The department of licensing shall administer and collect the county fuel taxes. The department shall deduct a percentage amount, as provided by contract, for administrative, collection, refund, and audit expenses incurred. The remaining proceeds shall be remitted to the custody of the state treasurer for monthly distribution under RCW 82.80.080.

**NEW SECTION. Sec. 87.** The department of licensing shall adopt rules necessary to implement this act and shall seek the assistance of the fuel tax advisory committee in developing and adopting the rules.

**NEW SECTION. Sec. 88.** The department of licensing may enter into a fuel tax cooperative agreement with another state or Canadian province for the administration, collection, and enforcement of each state's or Canadian province's fuel taxes.

**NEW SECTION. Sec. 89.** The following acts or parts of acts are each repealed:

(1) RCW 82.36.030 and 1996 c 104 s 1, 1994 c 262 s 18, 1993 c 54 s 2, 1991 c 339 s 14, 1990 c 42 s 202, 1987 c 174 s 2, & 1961 c 15 s 82.36.030;

(2) RCW 82.36.038 and 1987 c 174 s 3;

(3) RCW 82.36.220 and 1963 ex.s. c 22 s 20, 1961 ex.s. c 21 s 31, & 1961 c 15 s 82.36.220;

(4) RCW 82.38.040 and 1990 c 250 s 81, 1973 1st ex.s. c 156 s 2, & 1971 ex.s. c 175 s 5;

(5) RCW 82.38.082 and 1987 c 294 s 1; and

(6) RCW 82.38.086 and 1981 c 342 s 6.

**NEW SECTION. Sec. 90.** (1) Sections 8 through 12, 14, 15, 29, 35, 43, and 47 through 49 of this act are each added to chapter 82.36 RCW.

(2) Sections 52 through 57, 59, 69, 72, 73, 81 through 83, and 88 of this act are each added to chapter 82.38 RCW.

**NEW SECTION. Sec. 91.** This act takes effect January 1, 1999.

Passed the House February 12, 1998.

Passed the Senate March 11, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

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**CHAPTER 177**

[House Bill 2945]

**TRANSPORTATION FUNDING AND PLANNING—NOTIFICATIONS**

AN ACT Relating to notifications regarding transportation funding and planning; and amending RCW 43.79.270, 43.79.280, 43.105.160, and 43.105.190.

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

**Sec. 1.** RCW 43.79.270 and 1996 c 288 s 37 are each amended to read as follows:

(1) Whenever any money, from the federal government, or from other sources, which was not anticipated in the budget approved by the legislature has actually been received and is designated to be spent for a specific purpose, the head of any department, agency, board, or commission through which such expenditure shall be made is to submit to the governor a statement which may be in the form of a request for an allotment amendment setting forth the facts constituting the need for such expenditure and the estimated amount to be expended: PROVIDED, That no expenditure shall be made in excess of the actual amount received, and no money shall be expended for any purpose except the specific purpose for which it was received. A copy of any proposal submitted to the governor to expend money from an appropriated fund or account in excess of appropriations provided by law which is based on the receipt of unanticipated revenues shall be submitted to the joint legislative audit and review committee and also to the standing committees on ways and means of the house and senate if the legislature is in session at the same time as it is transmitted to the governor.

(2) Notwithstanding subsection (1) of this section, whenever money from any source that was not anticipated in the transportation budget approved by the legislature has actually been received and is designated to be spent for a specific purpose, the head of a department, agency, board, or commission through which the expenditure must be made shall submit to the governor a statement, which may be in the form of a request for an allotment amendment, setting forth the facts constituting the need for the expenditure and the estimated amount to be expended. However, no expenditure may be made in excess of the actual amount received, and no money may be expended for any purpose except the specific purpose for which it was received. A copy of any proposal submitted to the governor to expend money from an appropriated transportation fund or account in excess of appropriations provided by law that is based on the receipt of unanticipated revenues must be submitted, at a minimum, to the standing committees on transportation of the house and senate, if the legislature is in session, at the same time as it is transmitted to the governor. During the legislative interim, any such proposal must be submitted to the legislative transportation committee.

**Sec. 2.** RCW 43.79.280 and 1996 c 288 s 38 are each amended to read as follows:



(1) If the governor approves such estimate in whole or part, he shall endorse on each copy of the statement his approval, together with a statement of the amount approved in the form of an allotment amendment, and transmit one copy to the head of the department, agency, board, or commission authorizing the expenditure. An identical copy of the governor's statement of approval and a statement of the amount approved for expenditure shall be transmitted simultaneously to the joint legislative audit and review committee and also to the standing committee on ways and means of the house and senate of all executive approvals of proposals to expend money in excess of appropriations provided by law.

(2) If the governor approves an estimate with transportation funding implications, in whole or part, he shall endorse on each copy of the statement his approval, together with a statement of the amount approved in the form of an allotment amendment, and transmit one copy to the head of the department, agency, board, or commission authorizing the expenditure. An identical copy of the governor's statement of approval of a proposal to expend transportation money in excess of appropriations provided by law and a statement of the amount approved for expenditure must be transmitted simultaneously to the standing committees on transportation of the house and senate. During the legislative interim, all estimate approvals endorsed by the governor along with a statement of the amount approved in the form of an allotment amendment must be transmitted simultaneously to the legislative transportation committee.

Sec. 3. RCW 43.105.160 and 1996 c 171 s 9 are each amended to read as follows:

(1) The department shall prepare a state strategic information technology plan which shall establish a state-wide mission, goals, and objectives for the use of information technology, including goals for electronic access to government records, information, and services. The plan shall be developed in accordance with the standards and policies established by the board and shall be submitted to the board for review, modification as necessary, and approval. The department shall seek the advice of the board in the development of this plan.

The plan approved under this section shall be updated as necessary and submitted to the governor ((and)), the chairs and ranking minority members of the appropriations committees of the senate and the house of representatives, and, during the legislative session, to the chairs and ranking minority members of the transportation committees of the senate and the house of representatives. During the legislative interim, the approved plan must be submitted to the legislative transportation committee, instead of the standing transportation committees.

(2) The department shall prepare a biennial state performance report on information technology based on agency performance reports required under RCW 43.105.170 and other information deemed appropriate by the department. The report shall include, but not be limited to:

(a) An evaluation of performance relating to information technology;

(b) An assessment of progress made toward implementing the state strategic information technology plan, including progress toward electronic access to public information and enabling citizens to have two-way access to public records, information, and services;

(c) An analysis of the success or failure, feasibility, progress, costs, and timeliness of implementation of major information technology projects under RCW 43.105.190;

(d) Identification of benefits, cost avoidance, and cost savings generated by major information technology projects developed under RCW 43.105.190; and

(e) An inventory of state information services, equipment, and proprietary software.

Copies of the report shall be distributed biennially to the governor (~~and~~), the chairs and ranking minority members of the appropriations committees of the senate and the house of representatives, and, during the legislative session, the chairs and ranking minority members of the transportation committees of the senate and the house of representatives. During the legislative interim, the report must be submitted to the legislative transportation committee, instead of the standing transportation committees.

**Sec. 4.** RCW 43.105.190 and 1996 c 137 s 15 are each amended to read as follows:

(1) The department, with the approval of the board, shall establish standards and policies governing the planning, implementation, and evaluation of major information technology projects, including those proposed by the superintendent of public instruction, in conjunction with educational service districts, or state-wide or regional providers of K-12 education information technology services. The standards and policies shall:

(a) Establish criteria to identify projects which are subject to this section. Such criteria shall include, but not be limited to, significant anticipated cost, complexity, or state-wide significance of the project; and

(b) Establish a model process and procedures which agencies shall follow in developing and implementing project plans. Agencies may propose, for approval by the department, a process and procedures unique to the agency. The department may accept or require modification of such agency proposals or the department may reject such agency proposals and require use of the model process and procedures established under this subsection. Any process and procedures developed under this subsection shall require (i) distinct and identifiable phases upon which funding may be based, (ii) user validation of products through system demonstrations and testing of prototypes and deliverables, and (iii) other elements identified by the board.

Project plans and any agreements established under such plans shall be approved and mutually agreed upon by the director, the director of financial management, and the head of the agency proposing the project.

The director may terminate a major project if the director determines that the project is not meeting or is not expected to meet anticipated performance standards.

(2) The office of financial management shall establish policies and standards governing the funding of projects developed under this section. The policies and standards shall provide for:

(a) Funding of a project under terms and conditions mutually agreed to by the director, the director of financial management, and the head of the agency proposing the project. However, the office of financial management may require incremental funding of a project on a phase-by-phase basis whereby funds for a given phase of a project may be released only when the office of financial management determines, with the advice of the department, that the previous phase is satisfactorily completed;

(b) Acceptance testing of products to assure that products perform satisfactorily before they are accepted and final payment is made; and

(c) Other elements deemed necessary by the office of financial management.

(3) The department shall evaluate projects at three stages of development as follows: (a) Initial needs assessment; (b) feasibility study including definition of scope, development of tasks and timelines, and estimated costs and benefits; and (c) final project implementation plan based upon available funding.

Copies of project evaluations conducted under this subsection shall be submitted to the office of financial management and the chairs, ranking minority members, and staff coordinators of the appropriations committees of the senate and house of representatives.

If there are projects that receive funding from a transportation fund or account, copies of those projects' evaluations conducted under this subsection must be submitted, during the legislative session, to the chairs and ranking minority members of the transportation committees of the senate and the house of representatives. During the legislative interim, the project evaluations must be submitted to the legislative transportation committee.

Passed the House February 10, 1998.

Passed the Senate March 12, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

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## CHAPTER 178

[House Bill 2969]

### GUN SAFES--SALES AND USE TAX EXEMPTIONS

AN ACT Relating to sales and use tax exemption for gun safes; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; and providing an effective date.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales of gun safes.

(2) As used in this section and section 2 of this act, "gun safe" means an enclosure specifically designed or modified for the purpose of storing a firearm and equipped with a padlock, key lock, combination lock, or similar locking device which, when locked, prevents the unauthorized use of the firearm.

**NEW SECTION.** Sec. 2. A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter do not apply with respect to the use of gun safes as defined in section 1 of this act.

**NEW SECTION.** Sec. 3. This act takes effect July 1, 1998.

Passed the House February 12, 1998.

Passed the Senate March 6, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

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## CHAPTER 179

[Substitute House Bill 3015]

### STATE ROUTE NUMBER 16 CORRIDOR TAX EXEMPTIONS

AN ACT Relating to tax exemptions for the state route number 16 corridor; amending RCW 84.36.010; adding a new section to chapter 35.21 RCW; adding a new section to chapter 82.04 RCW; adding a new section to chapter 47.46 RCW; adding a new section to chapter 82.16 RCW; adding a new section to chapter 82.29A RCW; adding a new section to chapter 82.45 RCW; and creating new sections.

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

**NEW SECTION.** Sec. 1. The legislature finds and declares that the people of the state may not enjoy the full benefits of public-private initiative for state route number 16 corridor improvements due to the many taxes that may apply to this project. Generally these taxes would not apply if the state built these projects through traditional financing and construction methods. These tax exemptions will reduce the cost of the project, allow lower tolls, and reduce the time for which tolls are charged.

**NEW SECTION.** Sec. 2. A new section is added to chapter 35.21 RCW to read as follows:

A city or town may not impose a tax on amounts received from operating state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW.

**NEW SECTION.** Sec. 3. A new section is added to chapter 82.04 RCW to read as follows:

This chapter does not apply to amounts received from operating state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW.

**NEW SECTION.** Sec. 4. A new section is added to chapter 47.46 RCW to read as follows:

(1) A private entity that is party to an agreement under this chapter may apply for deferral of taxes on the site preparation for, the construction of, the acquisition of any related machinery and equipment which will become a part of, and the rental of equipment for use in the state route number 16 corridor improvements project under this chapter. Application shall be made to the department of revenue in a form and manner prescribed by the department of revenue. The application shall contain information regarding estimated or actual costs, time schedules for completion and operation, and other information required by the department of revenue. The department of revenue shall approve the application within sixty days if it meets the requirements of this section.

(2) The department of revenue shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on the project. The use of the certificate shall be governed by rules established by the department of revenue.

(3) A private entity granted a tax deferral under this section shall begin paying the deferred taxes in the fifth year after the date certified by the department of revenue as the date on which the project is operationally complete. The first payment is due on December 31st of the fifth calendar year after such certified date, with subsequent annual payments due on December 31st of the following nine years. Each payment shall equal ten percent of the deferred tax.

(4) The department of revenue may authorize an accelerated repayment schedule upon request of a private entity granted a deferral under this section.

(5) Interest shall not be charged on any taxes deferred under this section for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this section. The debt for deferred taxes is not extinguished by insolvency or other failure of the private entity.

(6) Applications and any other information received by the department of revenue under this section are not confidential and are subject to disclosure. Chapter 82.32 RCW applies to the administration of this section.

**NEW SECTION.** Sec. 5. A new section is added to chapter 82.16 RCW to read as follows:

The provisions of this chapter do not apply to amounts received from operating state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW.

**NEW SECTION.** Sec. 6. A new section is added to chapter 82.29A RCW to read as follows:

All leasehold interests in the state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW are exempt from tax under this chapter.

**NEW SECTION.** Sec. 7. A new section is added to chapter 82.45 RCW to read as follows:

Sales of the state route number 16 corridor transportation systems and facilities constructed under chapter 47.46 RCW are exempt from tax under this chapter.

Sec. 8. RCW 84.36.010 and 1990 c 47 s 2 are each amended to read as follows:

All property belonging exclusively to the United States, the state, any county or municipal corporation, all state route number 16 corridor transportation systems and facilities constructed under chapter 47.46 RCW, and all property under a financing contract pursuant to chapter 39.94 RCW or recorded agreement granting immediate possession and use to said public bodies or under an order of immediate possession and use pursuant to RCW 8.04.090, shall be exempt from taxation. All property belonging exclusively to a foreign national government shall be exempt from taxation if such property is used exclusively as an office or residence for a consul or other official representative of such foreign national government, and if the consul or other official representative is a citizen of such foreign nation.

**NEW SECTION.** Sec. 9. Section 8 of this act is effective for taxes levied for collection in 1999 and thereafter.

Passed the House February 27, 1998.

Passed the Senate March 10, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

## CHAPTER 180

[Substitute House Bill 3057]

### ADOPT-A-HIGHWAY SIGNS

AN ACT Relating to adopt-a-highway signs; and amending RCW 47.36.400.

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

Sec. 1. RCW 47.36.400 and 1991 c 94 s 4 are each amended to read as follows:

The department may install adopt-a-highway signs, with the following restrictions:

(1) Signs shall be designed by the department and may only include the words "adopt-a-highway litter control facility" or "adopt-a-highway litter control next XX miles" and the name of the litter control area sponsor. The sponsor's name shall not be displayed more predominantly than the remainder of the sign message. ~~((No))~~ Trademarks or business logos may be displayed;

(2) Signs may be placed along interstate, primary, and scenic system highways;

(3) Signs may be erected at other state-owned transportation facilities in accordance with RCW 47.40.100(1);

(4) For each litter control area designated by the department, one sign may be placed visible to traffic approaching from each direction;

((4)) (5) Signs shall be located so as not to detract from official traffic control signs installed pursuant to the manual on uniform traffic control devices adopted by the department;

((5)) (6) Signs shall be located so as not to restrict sight distance on approaches to intersections or interchanges;

((6)) (7) The department may charge reasonable fees to defray the cost of manufacture, installation, and maintenance of adopt-a-highway signs.

Passed the House February 13, 1998.

Passed the Senate March 5, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

## CHAPTER 181

[Substitute House Bill 3110]

### ENVIRONMENTAL MITIGATION OF ENVIRONMENTAL PROJECTS

AN ACT Relating to environmental mitigation of transportation projects; amending RCW 47.12.330; and creating new sections.

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

**NEW SECTION.** Sec. 1. The legislature finds that fish passage, fish habitat, wetlands, and flood management are critical issues in the effective management of watersheds in Washington. The legislature also finds that the state of Washington invests a considerable amount of resources on environmental mitigation activities related to fish passage, fish habitat, wetlands, and flood management. The department of transportation's advanced environmental mitigation revolving account established under RCW 47.12.340, is a key funding component in bringing environmental mitigation together with comprehensive watershed management.

Sec. 2. RCW 47.12.330 and 1997 c 140 s 2 are each amended to read as follows:

For the purpose of environmental mitigation of transportation projects, the department may acquire or develop, or both acquire and develop, environmental mitigation sites in advance of the construction of programmed projects. The term "advanced environmental mitigation" means mitigation of adverse impacts upon the environment from transportation projects before their design and construction. Advanced environmental mitigation consists of the acquisition of property; the acquisition of property, water, or air rights; the development of property for the purposes of improved environmental management; engineering costs necessary for such purchase and development; and the use of advanced environmental

mitigation sites to fulfill project environmental permit requirements. Advanced environmental mitigation must be conducted in a manner that is consistent with the definition of mitigation found in the council of environmental quality regulations (40 C.F.R. Sec. 1508.20) and the governor's executive order on wetlands (EO 90-04). Advanced environmental mitigation is for projects approved by the transportation commission as part of the state's six-year plan or included in the state highway system plan. Advanced environmental mitigation must give consideration to activities related to fish passage, fish habitat, wetlands, and flood management. Advanced environmental mitigation may also be conducted in partnership with federal, state, or local government agencies, tribal governments, interest groups, or private parties. Partnership arrangements may include joint acquisition and development of mitigation sites, purchasing and selling mitigation bank credits among participants, and transfer of mitigation site title from one party to another. Specific conditions of partnership arrangements will be developed in written agreements for each applicable environmental mitigation site.

**NEW SECTION. Sec. 3.** Flood management and flood hazard reduction pilot projects are established. The department of transportation shall convene, in cooperation with the department of ecology, a technical committee of applicable state agencies and local and tribal governments to establish guidance for expenditures related to flood management and flood hazard reduction projects receiving advanced environmental mitigation funding. The technical committee shall identify opportunities for coordination on flood-related issues and report to the appropriate legislative committees by December 1, 1998.

Passed the House February 13, 1998.

Passed the Senate March 12, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

## CHAPTER 182

[Substitute Senate Bill 5355]

### TANGIBLE PERSONAL PROPERTY DONATED TO CHARITABLE ORGANIZATIONS-- USE TAX EXEMPTIONS

AN ACT Relating to tangible personal property donated to charitable organizations; and amending RCW 82.12.02595.

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

Sec. 1. RCW 82.12.02595 and 1995 c 201 s 1 are each amended to read as follows:

(1) This chapter ((shall)) does not apply to the use by a nonprofit charitable organization or state or local governmental entity of any item of tangible personal property that has been donated to the nonprofit charitable organization or state or local governmental entity, or to the subsequent use of the property by a person to



whom the property is donated or bailed in furtherance of the purpose for which the property was originally donated.

(2) This chapter does not apply to the donation of tangible personal property without intervening use to a nonprofit charitable organization, or to the incorporation of tangible personal property without intervening use into real or personal property of or for a nonprofit charitable organization in the course of installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating the real or personal property for no charge.

Passed the Senate January 26, 1998.

Passed the House March 6, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

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## CHAPTER 183

[Senate Bill 5622]

### ALTERNATIVE HOUSING FOR YOUTH IN CRISIS— TAX EXEMPTIONS FOR NEW CONSTRUCTION

AN ACT Relating to tax exemptions for new construction of alternative housing for youth in crisis; amending RCW 82.08.02915 and 82.12.02915.

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

**Sec. 1.** RCW 82.08.02915 and 1997 c 386 s 56 are each amended to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales to health or social welfare organizations, as defined in RCW 82.04.431, of items necessary for new construction of alternative housing for youth in crisis, so long as the facility will be a licensed agency under chapter 74.15 RCW, upon completion. ~~((This section shall expire July 1, 1999.))~~

**Sec. 2.** RCW 82.12.02915 and 1997 c 386 s 57 are each amended to read as follows:

The provisions of this chapter shall not apply in respect to the use of any item acquired by a health or social welfare organization, as defined in RCW 82.04.431, of items necessary for new construction of alternative housing for youth in crisis, so long as the facility will be a licensed agency under chapter 74.15 RCW, upon completion. ~~((This section shall expire July 1, 1999.))~~

Passed the Senate March 9, 1998.

Passed the House March 6, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

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## CHAPTER 184

[Senate Bill 6113]

NONPROFIT ORGANIZATIONS PROVIDING MEDICAL RESEARCH OR TRAINING OF  
MEDICAL PERSONNEL—PROPERTY TAX EXEMPTION REVISIONS

AN ACT Relating to the property tax exemption for nonprofit organizations providing medical research or training of medical personnel; amending RCW 84.36.045; reenacting and amending RCW 84.36.805; and creating a new section.

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

**Sec. 1.** RCW 84.36.045 and 1984 c 220 s 3 are each amended to read as follows:

All real and personal property owned (~~(in fee or by contract purchase)~~) or used by any nonprofit corporation or association which is available without charge for research by, or for the training of, doctors, nurses, laboratory technicians, hospital administrators and staff or other hospital personnel, and which otherwise is used for medical research, the results of which will be available without cost to the public, shall be exempt from ad valorem taxation. If the real or personal property is leased, the benefit of the exemption shall inure to the nonprofit corporation or association.

To be exempt under this section, the property must be used exclusively for the purposes for which exemption is granted, except as provided in RCW 84.36.805.

**Sec. 2.** RCW 84.36.805 and 1997 c 156 s 8 and 1997 c 143 s 3 are each reenacted and amended to read as follows:

In order to be exempt pursuant to RCW 84.36.030, 84.36.035, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.045, 84.36.047, 84.36.050, 84.36.060, 84.36.350, 84.36.480, 84.36.550, and 84.36.046, the nonprofit organizations, associations or corporations shall satisfy the following conditions:

(1) The property is used exclusively for the actual operation of the activity for which exemption is granted, unless otherwise provided, and does not exceed an amount reasonably necessary for that purpose, except:

(a) The loan or rental of the property does not subject the property to tax if:

(i) The rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and

(ii) Except for the exemptions under RCW 84.36.030(4) and 84.36.037, the property would be exempt from tax if owned by the organization to which it is loaned or rented;

(h) The use of the property for fund-raising activities does not subject the property to tax if the fund-raising activities are consistent with the purposes for which the exemption is granted;

(2) The property is irrevocably dedicated to the purpose for which exemption has been granted, and on the liquidation, dissolution, or abandonment by said organization, association, or corporation, said property will not inure directly or

indirectly to the benefit of any shareholder or individual, except a nonprofit organization, association, or corporation which too would be entitled to property tax exemption. This property need not be irrevocably dedicated if it is leased or rented to those qualified for exemption pursuant to RCW 84.36.035, 84.36.040, 84.36.041, 84.36.043, 84.36.045, or 84.36.046 or those qualified for exemption as an association engaged in the production or performance of musical, dance, artistic, dramatic, or literary works pursuant to RCW 84.36.060, but only if under the terms of the lease or rental agreement the nonprofit organization, association, or corporation receives the benefit of the exemption;

(3) The facilities and services are available to all regardless of race, color, national origin or ancestry;

(4) The organization, association, or corporation is duly licensed or certified where such licensing or certification is required by law or regulation;

(5) Property sold to organizations, associations, or corporations with an option to be repurchased by the seller shall not qualify for exempt status;

(6) The director of the department of revenue shall have access to its books in order to determine whether such organization, association, or corporation is exempt from taxes within the intent of RCW 84.36.030, 84.36.035, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.045, 84.36.047, 84.36.050, 84.36.060, 84.36.350, 84.36.480, and 84.36.046.

**NEW SECTION. Sec. 3.** This act applies to taxes levied for collection in 1999 and thereafter.

Passed the Senate March 9, 1998.

Passed the House March 6, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

## CHAPTER 185

[Second Substitute Senate Bill 6156]

### STUDY OF METHODS FOR CALCULATING WATER-DEPENDENT LEASE RATES ON STATE-OWNED AQUATIC LANDS

AN ACT Relating to studying methods for calculating water-dependent lease rates on state-owned aquatic lands; amending RCW 79.90.480; and creating new sections.

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

**NEW SECTION. Sec. 1.** (1) The legislature finds that the current method for determining water-dependent rental rates for aquatic land leases may not be achieving the management goals in RCW 79.90.455. The current method for setting rental rates, as well as alternatives to the current methods, should be evaluated in light of achieving management goals for aquatic lands leases. The legislature further finds that there should be no further increases in water-dependent rental rates for marina leases before the completion of this evaluation.

(2) The department of natural resources shall study and prepare a report to the legislature on alternatives to the current method for determination of water-

dependent rent set forth in RCW 79.90.480. The report shall be prepared with the assistance of appropriate outside economic expertise and stakeholder involvement. Affected stakeholders shall participate with the department by providing information necessary to complete this study. For each alternative, the report shall:

- (a) Describe each method and the costs and benefits of each;
- (b) Compare each with the current method of calculating rents;
- (c) Provide the private industry perspective;
- (d) Describe the public perspective;
- (e) Analyze the impact on state lease revenue;
- (f) Evaluate the impacts of water-dependent rates on economic development in economically distressed counties; and
- (g) Evaluate the ease of administration.

(3) The report shall be presented to the legislature by November 1, 1998, with the recommendations of the department clearly identified. The department's recommendations shall include draft legislation as necessary for implementation of its recommendations.

**Sec. 2.** RCW 79.90.480 and 1984 c 221 s 7 are each amended to read as follows:

Except as otherwise provided by this chapter, annual rent rates for the lease of state-owned aquatic lands for water-dependent uses shall be determined as follows:

(1)(a) The assessed land value, exclusive of improvements, as determined by the county assessor, of the upland tax parcel used in conjunction with the leased area or, if there are no such uplands, of the nearest upland tax parcel used for water-dependent purposes divided by the parcel area equals the upland value.

(b) The upland value times the area of leased aquatic lands times thirty percent equals the aquatic land value.

(2) As of July 1, 1989, and each July 1 thereafter, the department shall determine the real capitalization rate to be applied to water-dependent aquatic land leases commencing or being adjusted under subsection (3)(a) of this section in that fiscal year. The real capitalization rate shall be the real rate of return, except that until June 30, 1989, the real capitalization rate shall be five percent and thereafter it shall not change by more than one percentage point in any one year or be more than seven percent or less than three percent.

(3) The annual rent shall be:

(a) Determined initially, and redetermined every four years or as otherwise provided in the lease, by multiplying the aquatic land value times the real capitalization rate; and

(b) Adjusted by the inflation rate each year in which the rent is not determined under subsection (3)(a) of this section.

(4) If the upland parcel used in conjunction with the leased area is not assessed or has an assessed value inconsistent with the purposes of the lease, the

nearest comparable upland parcel used for similar purposes shall be substituted and the lease payment determined in the same manner as provided in this section.

(5) For the purposes of this section, "upland tax parcel" is a tax parcel, some portion of which has upland characteristics. Filled tidelands or shorelands with upland characteristics which abut state-owned aquatic land shall be considered as uplands in determining aquatic land values.

(6) The annual rent for filled state-owned aquatic lands that have the characteristics of uplands shall be determined in accordance with RCW 79.90.500 in those cases in which the state owns the fill and has a right to charge for the fill.

(7) For leases for marina uses only, beginning on the effective date of this section, the annual rental rates in effect on December 31, 1997, shall remain in effect until July 1, 1999, at which time the annual water-dependent rent shall be determined by the method in effect at that time. In order to be eligible for the rate to remain at this level, a marina lease must be in good standing, meaning that the lessee must be current with payment of rent, the lease not expired or in approved holdover status, and the lessee not in breach of other terms of the agreement.

(8) For all new leases for marinas, or any other water-dependent use, issued after December 31, 1997, the initial annual water-dependent rent shall be determined by the methods in subsections (1) through (6) of this section.

**NEW SECTION, Sec. 3.** In order to facilitate the participation of affected stakeholders in the preparation of the report to the legislature, the department of natural resources shall form two committees: The report preparation committee and the report evaluation committee.

(1) The report preparation committee consists of one representative with knowledge of waterfront industries and economic principles from each of the following groups: Private marina operators, northwest marine trade association, association of Washington cities, association of Washington counties, Washington public ports association, commercial waterfront business other than marinas, and the aquatic resources division of the department of natural resources. The report preparation committee will work with the staff and consultants of the department of natural resources to assemble and evaluate relevant data, develop alternatives, and draft the report.

(2) The report evaluation committee consists of the manager of the aquatic resources division, three representatives of the marina industry state-wide nominated by the Northwest marine trade association, three representatives of other commercial users of aquatic lands state-wide chosen by the department of natural resources in consultation with the Northwest marine trade association, the executive director of the Washington public ports association, and one representative selected jointly by the association of Washington cities and the association of Washington counties. The report evaluation committee shall review the draft report submitted by the report preparation committee and assist the department of natural resources in identifying economic impacts of the various alternatives and in selecting a preferred alternative to present to the legislature.

**NEW SECTION. Sec. 4.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.

Passed the Senate March 7, 1998.

Passed the House March 4, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

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## CHAPTER 186

[Senate Bill 6172]

### SERVICE OF PETITIONS FOR JUDICIAL REVIEW OF AGENCY ACTIONS— CLARIFICATION OF PERSONS TO BE SERVED

AN ACT Relating to service of petitions for judicial review of agency actions; and amending RCW 34.05.542.

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

**Sec. 1.** RCW 34.05.542 and 1988 c 288 s 509 are each amended to read as follows:

Subject to other requirements of this chapter or of another statute:

(1) A petition for judicial review of a rule may be filed at any time, except as limited by RCW 34.05.375.

(2) A petition for judicial review of an order shall be filed with the court and served on the agency, the office of the attorney general, and all parties of record within thirty days after service of the final order.

(3) A petition for judicial review of agency action other than the adoption of a rule or the entry of an order is not timely unless filed with the court and served on the agency, the office of the attorney general, and all other parties of record within thirty days after the agency action, but the time is extended during any period that the petitioner did not know and was under no duty to discover or could not reasonably have discovered that the agency had taken the action or that the agency action had a sufficient effect to confer standing upon the petitioner to obtain judicial review under this chapter.

(4) Service of the petition on the agency shall be by delivery of a copy of the petition to the office of the director, or other chief administrative officer or chairperson of the agency, at the principal office of the agency. Service of a copy by mail upon the other parties of record and the office of the attorney general shall be deemed complete upon deposit in the United States mail, as evidenced by the postmark.

(5) Failure to timely serve a petition on the office of the attorney general is not grounds for dismissal of the petition.

(6) For purposes of this section, service upon the attorney of record of any agency or party of record constitutes service upon the agency or party of record.

Passed the Senate February 12, 1998.  
 Passed the House March 4, 1998.  
 Approved by the Governor March 27, 1998.  
 Filed in Office of Secretary of State March 27, 1998.

**CHAPTER 187**

[Senate Bill 6228]

**AIRCRAFT DEALERS' LICENSE FEES AND DISTRIBUTIONS—REVISIONS**

AN ACT Relating to aircraft dealers' license fees; and amending RCW 14.20.050 and 14.20.060.

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

**Sec. 1.** RCW 14.20.050 and 1984 c 7 s 13 are each amended to read as follows:

The fee for original aircraft dealer's license for each calendar year or fraction thereof is ~~((twenty-five))~~ seventy-five dollars, which includes one aircraft dealer's certificate and which ~~((may))~~ must be renewed annually for a fee of ~~((ten))~~ seventy-five dollars. Additional aircraft dealer certificates may be obtained for ~~((two))~~ ten dollars each per year. If any dealer fails or neglects to apply for renewal of his license prior to February 1st in each year, his license shall be declared canceled by the secretary, in which case any such dealer desiring a license shall ~~((apply for an original license and pay the fee required for an original license))~~ reapply and pay a fee of seventy-five dollars.

**Sec. 2.** RCW 14.20.060 and 1984 c 7 s 14 are each amended to read as follows:

The fees set forth in RCW 14.20.050 shall be paid to the secretary. The fee for any calendar year may be paid on and after the first day of December of the preceding year. The secretary shall give appropriate receipts therefor. The fees collected under this chapter shall be credited to the ~~((general))~~ aeronautics account of the transportation fund. The secretary may prescribe requirements for the possession and exhibition of aircraft dealer's licenses and aircraft dealer's certificates.

Passed the Senate February 11, 1998.  
 Passed the House March 4, 1998.  
 Approved by the Governor March 27, 1998.  
 Filed in Office of Secretary of State March 27, 1998.

**CHAPTER 188**

[Substitute Senate Bill 6229]

**AIRCRAFT REGISTRATION COMPLIANCE**

AN ACT Relating to compliance with aircraft registration laws; and amending RCW 47.68.250.

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

**Sec. 1.** RCW 47.68.250 and 1995 c 170 s 3 are each amended to read as follows:

Every aircraft shall be registered with the department for each calendar year in which the aircraft is operated or is based within this state. A fee of four dollars shall be charged for each such registration and each annual renewal thereof.

Possession of the appropriate effective federal certificate, permit, rating, or license relating to ownership and airworthiness of the aircraft, and payment of the excise tax imposed by Title 82 RCW for the privilege of using the aircraft within this state during the year for which the registration is sought, and payment of the registration fee required by this section shall be the only requisites for registration of an aircraft under this section.

The registration fee imposed by this section shall be payable to and collected by the secretary. The fee for any calendar year must be paid during the month of January, and shall be collected by the secretary at the time of the collection by him or her of the said excise tax. If the secretary is satisfied that the requirements for registration of the aircraft have been met, he or she shall thereupon issue to the owner of the aircraft a certificate of registration therefor. The secretary shall pay to the state treasurer the registration fees collected under this section, which registration fees shall be credited to the aeronautics account in the transportation fund.

It shall not be necessary for the registrant to provide the secretary with originals or copies of federal certificates, permits, ratings, or licenses. The secretary shall issue certificates of registration, or such other evidences of registration or payment of fees as he or she may deem proper; and in connection therewith may prescribe requirements for the possession and exhibition of such certificates or other evidences.

The provisions of this section shall not apply to:

(1) An aircraft owned by and used exclusively in the service of any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which is not engaged in carrying persons or property for commercial purposes;

(2) An aircraft registered under the laws of a foreign country;

(3) An aircraft which is owned by a nonresident and registered in another state: PROVIDED, That if said aircraft shall remain in and/or be based in this state for a period of ninety days or longer it shall not be exempt under this section;

(4) An aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;

(5) An aircraft owned by the commercial manufacturer thereof while being operated for test or experimental purposes, or for the purpose of training crews for purchasers of the aircraft;



(6) An aircraft being held for sale, exchange, delivery, test, or demonstration purposes solely as stock in trade of an aircraft dealer licensed under Title 14 RCW;

(7) An aircraft based within the state that is in an unairworthy condition, is not operated within the registration period, and has obtained a written exemption issued by the secretary.

The secretary shall be notified within one week of any change in ownership of a registered aircraft. The notification shall contain the N, NC, NR, NL, or NX number of the aircraft, the full name and address of the former owner, and the full name and address of the new owner. For failure to so notify the secretary, the registration of that aircraft may be canceled by the secretary, subject to reinstatement upon application and payment of a reinstatement fee of ten dollars by the new owner.

A municipality or port district that owns, operates, or leases an airport, as defined in RCW 47.68.020, with the intent to operate, shall require from an aircraft owner proof of aircraft registration or proof of intent to register an aircraft as a condition of leasing or selling tiedown or hangar space for an aircraft. The airport shall inform the lessee or purchaser of the tiedown or hangar space of the state law requiring registration and direct the person to comply with the state law if the person has not already done so. The airport may lease or sell tiedown or hangar space to owners of nonregistered aircraft after presenting them with the appropriate state registration forms. It is then the responsibility of the lessee or purchaser to register the aircraft. The airport shall report to the department's aviation division at the end of each month, the names, addresses, and "N" numbers of those aircraft owners not yet registered.

Passed the Senate February 11, 1998.

Passed the House March 4, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

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## CHAPTER 189

[Senate Bill 6311]

### ASSEMBLY HALLS OR MEETING PLACES USED FOR SPECIFIC EDUCATION PURPOSES— PROPERTY TAX EXEMPTIONS

AN ACT Relating to the property taxation of assembly halls or meeting places; and amending RCW 84.36.037.

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

**Sec. 1.** RCW 84.36.037 and 1997 c 298 s 1 are each amended to read as follows:

(1) Real or personal property owned by a nonprofit organization, association, or corporation in connection with the operation of a public assembly hall or meeting place is exempt from taxation. The area exempt under this section includes the building or buildings, the land under the buildings, and an additional

area necessary for parking, not exceeding a total of one acre: PROVIDED, That for property essentially unimproved except for restroom facilities and structures on such property which has been used primarily for annual community celebration events for at least ten years, such exempt property shall not exceed twenty-nine acres.

(2) To qualify for this exemption the property must be used exclusively for public gatherings and be available to all organizations or persons desiring to use the property, but the owner may impose conditions and restrictions which are necessary for the safekeeping of the property and promote the purposes of this exemption. Membership shall not be a prerequisite for the use of the property.

(3) The use of the property for pecuniary gain or to promote business activities, except as provided in this section, nullifies the exemption otherwise available for the property for the assessment year. The exemption is not nullified by:

(a) The collection of rent or donations if the amount is reasonable and does not exceed maintenance and operation expenses created by the user.

(b) Fund-raising activities conducted by a nonprofit organization.

(c) The use of the property for pecuniary gain or to promote business activities for periods of not more than seven days in a year.

(d) In a county with a population of less than ten thousand, the use of the property to promote the following business activities: Dance lessons, art classes, or music lessons.

(e) An inadvertent use of the property in a manner inconsistent with the purpose for which exemption is granted, if the inadvertent use is not part of a pattern of use. A pattern of use is presumed when an inadvertent use is repeated in the same assessment year or in two or more successive assessment years.

(4) The department of revenue shall narrowly construe this exemption.

Passed the Senate February 17, 1998.

Passed the House March 6, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

## CHAPTER 190

[Engrossed Substitute Senate Bill 6328]

### FISH AND WILDLIFE ENFORCEMENT CODE

AN ACT Relating to fish and wildlife code enforcement; amending RCW 75.12.320, 77.16.135, 75.08.011, 75.08.160, 75.08.274, 75.08.295, 75.08.300, 75.12.010, 75.12.015, 75.12.040, 75.12.132, 75.12.140, 75.12.210, 75.12.230, 75.12.390, 75.12.440, 75.12.650, 75.20.040, 75.20.060, 75.20.103, 75.20.110, 75.24.080, 75.24.100, 75.24.110, 75.28.010, 75.28.045, 75.28.095, 75.28.113, 75.28.125, 75.28.710, 75.28.740, 75.30.070, 75.30.140, 75.30.160, 75.30.210, 75.30.250, 75.30.280, 75.30.290, 75.30.350, 75.30.450, 75.58.010, 77.08.010, 77.12.055, 77.12.080, 77.12.090, 77.12.095, 77.12.120, 77.16.010, 77.16.020, 77.16.095, 77.16.170, 77.16.220, and 77.32.350; reenacting and amending RCW 75.20.100 and 75.30.130; adding a new chapter to Title 77 RCW; creating a new section; recodifying RCW 75.10.100, 75.10.220, 75.12.320, 77.12.120, 77.12.130, and 77.16.135; repealing RCW 75.10.010, 75.10.020, 75.10.030, 75.10.040, 75.10.050, 75.10.060, 75.10.080, 75.10.090, 75.10.110, 75.10.120, 75.10.130, 75.10.140, 75.10.170, 75.10.180, 75.10.190, 75.10.200, 75.10.210, 75.12.020,

75.12.031, 75.12.070, 75.12.090, 75.12.100, 75.12.115, 75.12.120, 75.12.125, 75.12.127, 75.12.400, 75.12.410, 75.12.420, 75.12.430, 75.24.050, 75.24.090, 75.25.150, 77.12.060, 77.12.070, 77.16.040, 77.16.050, 77.16.060, 77.16.080, 77.16.090, 77.16.100, 77.16.110, 77.16.120, 77.16.130, 77.16.150, 77.16.160, 77.16.180, 77.16.190, 77.16.250, 77.16.260, 77.16.310, 77.16.320, 77.16.330, 77.16.610, 77.21.010, 77.21.040, and 77.21.060; and prescribing penalties.

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

**NEW SECTION. Sec. 1. PURPOSE.** The legislature finds that merger of the departments of fisheries and wildlife resulted in two criminal codes applicable to fish and wildlife, and that it has become increasingly difficult to administer and enforce the two criminal codes. Furthermore, laws defining crimes involving fish and wildlife have evolved over many years of changing uses and management objectives for fish and wildlife. The resulting two codes make it difficult for citizens to comply with the law and unnecessarily complicate enforcement of laws against violators.

The legislature intends by chapter . . . , Laws of 1998 (this act) to revise and recodify the criminal laws governing fish and wildlife, ensuring that all people involved with fish and wildlife are able to know and understand the requirements of the laws and the risks of violation. Additionally, the legislature intends to create a more uniform approach to criminal laws governing fish and wildlife and to the laws authorizing prosecution, sentencing, and punishments, including repealing crimes that are redundant to other provisions of the criminal code.

Chapter . . . , Laws of 1998 (this act) is not intended to alter existing powers of the commission or the director to adopt rules or exercise powers over fish and wildlife. In some places reference is made to violation of department rules, but this is intended to conform with current powers of the commission, director, or both, to adopt rules governing fish and wildlife activities.

**NEW SECTION. Sec. 2. EXEMPTION FOR DEPARTMENT ACTIONS.** A person is not guilty of a crime under this chapter if the person is an officer, employee, or agent of the department lawfully acting in the course of his or her authorized duties.

**NEW SECTION. Sec. 3. AUTHORITY TO DEFINE VIOLATION OF A RULE AS AN INFRACTION.** If the commission or director has authority to adopt a rule that is punishable as a crime under this chapter, then the commission or director may provide that violation of the rule shall be punished with notice of infraction under RCW 7.84.030.

**NEW SECTION. Sec. 4. SEPARATE OFFENSES FOR EACH BIG GAME, PROTECTED, OR ENDANGERED ANIMAL.** Where it is unlawful to hunt, take, fish, or possess big game or protected or endangered fish or wildlife, then each individual animal unlawfully taken or possessed is a separate offense.

**NEW SECTION. Sec. 5. JURISDICTION.** District courts have jurisdiction concurrent with superior courts for misdemeanors and gross misdemeanors committed in violation of this chapter and may impose the punishment provided for these offenses. Superior courts have jurisdiction over felonies committed in

violation of this chapter. Venue for offenses occurring in off-shore waters shall be in a county bordering on the Pacific Ocean, or the county where fish or wildlife from the offense are landed.

**NEW SECTION. Sec. 6. CONVICTION IN A STATE OR MUNICIPAL COURT.** Unless the context clearly requires otherwise, as used in this chapter, "conviction" means a final conviction in a state or municipal court or an unvacated forfeiture of bail or collateral deposited to secure the defendant's appearance in court. A plea of guilty, or a finding of guilt for a violation of this title or rule of the commission or director constitutes a conviction regardless of whether the imposition of sentence is deferred or the penalty is suspended.

**NEW SECTION. Sec. 7. REFERENCE TO CHAPTERS 7.84 AND 9A.20 RCW.** Crimes defined by this chapter shall be punished as infractions, misdemeanors, gross misdemeanors, or felonies, based on the classification of crimes set out in chapters 7.84 and 9A.20 RCW.

**NEW SECTION. Sec. 8. ACTING FOR COMMERCIAL PURPOSES—VALUE OF FISH OR WILDLIFE—PROOF.** (1) For purposes of this chapter, a person acts for commercial purposes if the person:

- (a) Acts with intent to sell, attempted to sell, sold, bartered, attempted to purchase, or purchased fish or wildlife;
- (b) Uses gear typical of that used in commercial fisheries;
- (c) Exceeds the bag or possession limits for personal use by taking or possessing more than three times the amount of fish or wildlife allowed;
- (d) Delivers or attempts to deliver fish or wildlife to a person who sells or resells fish or wildlife including any licensed or unlicensed wholesaler; or
- (e) Takes fish using a vessel designated on a commercial fishery license and gear not authorized in a personal use fishery.

(2) For purposes of this chapter, the value of any fish or wildlife may be proved based on evidence of legal or illegal sales involving the person charged or any other person, of offers to sell or solicitation of offers to sell by the person charged or by any other person, or of any market price for the fish or wildlife including market price for farm-raised game animals. The value assigned to specific wildlife by RCW 77.21.070 may be presumed to be the value of such wildlife. It is not relevant to proof of value that the person charged misrepresented that the fish or wildlife was taken in compliance with law if the fish or wildlife was unlawfully taken and had no lawful market value.

**NEW SECTION. Sec. 9. UNLAWFUL HUNTING OF GAME BIRDS.** (1) A person is guilty of unlawful hunting of game birds in the second degree if the person:

- (a) Hunts a game bird and the person does not have and possess all licenses, tags, stamps, and permits required under this title;
- (b) Maliciously destroys, takes, or harms the eggs or nests of a game bird except when authorized by permit; or

(c) Violates any rule of the commission or director regarding seasons, bag or possession limits but less than two times the bag or possession limit, closed areas including game reserves, closed times, or other rule addressing the manner or method of hunting or possession of game birds.

(2) A person is guilty of unlawful hunting of game birds in the first degree if the person hunts game birds and the person takes or possesses two times or more than the possession or bag limit for such game birds allowed by rule of the commission or director.

(3)(a) Unlawful hunting of game birds in the second degree is a misdemeanor.

(b) Unlawful hunting of game birds in the first degree is a gross misdemeanor.

**NEW SECTION. Sec. 10. UNLAWFUL HUNTING OF BIG GAME.** (1) A person is guilty of unlawful hunting of big game in the second degree if the person:

(a) Hunts big game and the person does not have and possess all licenses, tags, or permits required under this title; or

(b) Violates any rule of the commission or director regarding seasons, bag or possession limits, closed areas including game reserves, closed times, or any other rule governing the hunting, taking, or possession of big game.

(2) A person is guilty of unlawful hunting of big game in the first degree if the person was previously convicted of any crime under this title involving unlawful hunting, killing, possessing, or taking big game, and within five years of the date that the prior conviction was entered the person hunts for big game and:

(a) The person does not have and possess all licenses, tags, or permits required under this title; or

(b) The act was in violation of any rule of the commission or director regarding seasons, bag or possession limits, closed areas including game reserves, or closed times.

(3)(a) Unlawful hunting of big game in the second degree is a gross misdemeanor.

(b) Unlawful hunting of big game in the first degree is a class C felony. Upon conviction, the department shall revoke all licenses or tags involved in the crime and the department shall order the person's hunting privileges suspended for two years.

**NEW SECTION. Sec. 11. UNLAWFUL HUNTING OF GAME ANIMALS.** (1) A person is guilty of unlawful hunting of game animals in the second degree if the person:

(a) Hunts a game animal that is not classified as big game, and does not have and possess all licenses, tags, or permits required by this title; or

(b) Violates any rule of the commission or director regarding seasons, bag or possession limits but less than two times the bag or possession limit, closed areas

including game reserves, closed times, or other rule addressing the manner or method of hunting or possession of game animals not classified as big game.

(2)(a) A person is guilty of unlawful hunting of game animals in the first degree if the person hunts a game animal that is not classified as big game; and

(b) The person takes or possesses two times or more than the possession or bag limit for such game animals allowed by rule of the commission or director.

(3)(a) Unlawful hunting of game animals in the second degree is a misdemeanor.

(b) Unlawful hunting of game animals in the first degree is a gross misdemeanor.

**NEW SECTION. Sec. 12. WEAPONS, TRAPS, OR DOGS ON GAME RESERVES.** (1) A person is guilty of unlawful use of weapons, traps, or dogs on game reserves if:

(a) The person uses firearms, other hunting weapons, or traps on a game reserve; or

(b) The person negligently allows a dog upon a game reserve.

(2) This section does not apply to persons on a public highway or if the conduct is authorized by rule of the department.

(3) This section does not apply to a person in possession of a handgun if the person in control of the handgun possesses a valid concealed pistol license and the handgun is concealed on the person.

(4) Unlawful use of weapons, traps, or dogs on game reserves is a misdemeanor.

**NEW SECTION. Sec. 13. UNLAWFUL TAKING OF ENDANGERED FISH OR WILDLIFE.** (1) A person is guilty of unlawful taking of endangered fish or wildlife in the second degree if the person hunts, fishes, possesses, maliciously harasses or kills fish or wildlife, or maliciously destroys the nests or eggs of fish or wildlife and the fish or wildlife is designated by the commission as endangered, and the taking has not been authorized by rule of the commission.

(2) A person is guilty of unlawful taking of endangered fish or wildlife in the first degree if the person has been:

(a) Convicted under subsection (1) of this section or convicted of any crime under this title involving the killing, possessing, harassing, or harming of endangered fish or wildlife; and

(b) Within five years of the date of the prior conviction the person commits the act described by subsection (1) of this section.

(3)(a) Unlawful taking of endangered fish or wildlife in the second degree is a gross misdemeanor.

(b) Unlawful taking of endangered fish or wildlife in the first degree is a class C felony. The department shall revoke any licenses or tags used in connection with the crime and order the person's privileges to hunt, fish, trap, or obtain licenses under this title and Title 75 RCW to be suspended for two years.

**NEW SECTION. Sec. 14. UNLAWFUL TAKING OF PROTECTED FISH OR WILDLIFE.** (1) A person is guilty of unlawful taking of protected fish or wildlife if:

(a) The person hunts, fishes, possesses, or maliciously kills protected fish or wildlife, or the person possesses or maliciously destroys the eggs or nests of protected fish or wildlife, and the taking has not been authorized by rule of the commission; or

(b) The person violates any rule of the commission regarding the taking, harming, harassment, possession, or transport of protected fish or wildlife.

(2) Unlawful taking of protected fish or wildlife is a misdemeanor.

**NEW SECTION. Sec. 15. UNLAWFUL TAKING OF UNCLASSIFIED FISH OR WILDLIFE.** (1) A person is guilty of unlawful taking of unclassified fish or wildlife if:

(a) The person kills, hunts, fishes, takes, holds, possesses, transports, or maliciously injures or harms fish or wildlife that is not classified as big game, game fish, game animals, game birds, food fish, shellfish, protected wildlife, or endangered wildlife; and

(b) The act violates any rule of the commission or the director.

(2) Unlawful taking of unclassified fish or wildlife is a misdemeanor.

**NEW SECTION. Sec. 16. UNLAWFUL USE OF POISON OR EXPLOSIVES.** (1) A person is guilty of unlawful use of poison or explosives if:

(a) The person lays out, sets out, or uses a drug, poison, or other deleterious substance that kills, injures, harms, or endangers fish or wildlife, except if the person is using the substance in compliance with federal and state laws and label instructions; or

(b) The person lays out, sets out, or uses an explosive that kills, injures, harms, or endangers fish or wildlife, except if authorized by law or permit of the director.

(2) Unlawful use of poison or explosives is a gross misdemeanor.

**NEW SECTION. Sec. 17. INFRACTION VIOLATION OF RULES GOVERNING FISH AND WILDLIFE.** A person is guilty of an infraction, which shall be cited and punished as provided under chapter 7.84 RCW, if the person:

(1) Fails to immediately record a catch of fish or shellfish on a catch record card required by RCW 75.25.190 or 77.32.050, or required by rule of the commission under this title or Title 75 RCW; or

(2) Fishes for personal use using barbed hooks in violation of any rule; or

(3) Violates any other rule of the commission or director that is designated by rule as an infraction.

**NEW SECTION. Sec. 18. UNLAWFUL RECREATIONAL FISHING IN THE SECOND DEGREE.** (1) A person is guilty of unlawful recreational fishing in the second degree if the person fishes for, takes, possesses, or harvests fish or shellfish and:

(a) The person does not have and possess the license or the catch record card required by chapter 75.25 or 77.32 RCW for such activity; or

(b) The action violates any rule of the commission or the director regarding seasons, bag or possession limits but less than two times the bag or possession limit, closed areas, closed times, or any other rule addressing the manner or method of fishing or possession of fish, except for use of a net to take fish as provided for in section 50 of this act.

(2) Unlawful recreational fishing in the second degree is a misdemeanor.

**NEW SECTION. Sec. 19. UNLAWFUL RECREATIONAL FISHING IN THE FIRST DEGREE.** (1) A person is guilty of unlawful recreational fishing in the first degree if:

(a) The person takes, possesses, or retains two times or more than the bag limit or possession limit of fish or shellfish allowed by any rule of the director or commission setting the amount of food fish, game fish, or shellfish that can be taken, possessed, or retained for noncommercial use;

(b) The person fishes in a fishway; or

(c) The person shoots, gaffs, snags, snares, spears, dipnets, or stonies fish in state waters, or possesses fish taken by such means, unless such means are authorized by express rule of the commission or director.

(2) Unlawful recreational fishing in the first degree is a gross misdemeanor.

**NEW SECTION. Sec. 20. UNLAWFUL TAKING OF SEAWEED.** (1) A person is guilty of unlawful taking of seaweed if the person takes, possesses, or harvests seaweed and:

(a) The person does not have and possess the license required by chapter 75.25 RCW for taking seaweed; or

(b) The action violates any rule of the department or the department of natural resources regarding seasons, possession limits, closed areas, closed times, or any other rule addressing the manner or method of taking, possessing, or harvesting of seaweed.

(2) Unlawful taking of seaweed is a misdemeanor. This does not affect rights of the state to recover civilly for trespass, conversion, or theft of state-owned valuable materials.

**NEW SECTION. Sec. 21. WASTE OF FISH AND WILDLIFE.** (1) A person is guilty of waste of fish and wildlife in the second degree if:

(a) The person kills, takes, or possesses fish or wildlife and the value of the fish or wildlife is greater than twenty dollars but less than two hundred fifty dollars; and

(b) The person recklessly allows such fish or wildlife to be wasted.

(2) A person is guilty of waste of fish and wildlife in the first degree if:

(a) The person kills, takes, or possesses food fish, shellfish, game fish, game birds, or game animals having a value of two hundred fifty dollars or more; and

(b) The person recklessly allows such fish or wildlife to be wasted.

(3)(a) Waste of fish and wildlife in the second degree is a misdemeanor.



(b) Waste of fish and wildlife in the first degree is a gross misdemeanor. Upon conviction, the department shall revoke any license or tag used in the crime and shall order suspension of the person's privileges to engage in the activity in which the person committed waste of fish and wildlife in the first degree for a period of one year.

(4) It is prima facie evidence of waste if a processor purchases or engages a quantity of food fish, shellfish, or game fish that cannot be processed within sixty hours after the food fish or shellfish are taken from the water, unless the food fish or shellfish are preserved in good marketable condition.

**NEW SECTION. Sec. 22. UNLAWFUL INTERFERENCE WITH FISHING OR HUNTING GEAR.** (1) A person is guilty of unlawful interference with fishing or hunting gear in the second degree if the person:

(a) Takes or releases a wild animal from another person's trap without permission;

(b) Springs, pulls up, damages, possesses, or destroys another person's trap without the owner's permission; or

(c) Interferes with recreational gear used to take fish or shellfish.

(2) Unlawful interference with fishing or hunting gear in the second degree is a misdemeanor.

(3) A person is guilty of unlawful interference with fishing or hunting gear in the first degree if the person:

(a) Takes or releases food fish or shellfish from commercial fishing gear without the owner's permission; or

(b) Intentionally destroys or interferes with commercial fishing gear.

(4) Unlawful interference with fishing or hunting gear in the first degree is a gross misdemeanor.

(5) A person is not in violation of unlawful interference with fishing or hunting gear if the person removes a trap placed on property owned, leased, or rented by the person.

**NEW SECTION. Sec. 23. FAILING TO IDENTIFY TRAPS FOR FURBEARING ANIMALS.** (1) A person is guilty of failing to identify traps for furbearing animals if the person fails to attach to the person's traps or devices a legible metal tag with either the department identification number of the trapper or the name and address of the trapper in English letters not less than one-eighth inch in height.

(2) Failing to identify traps for furbearing animals is a misdemeanor.

**NEW SECTION. Sec. 24. OBSTRUCTING THE TAKING OF FISH OR WILDLIFE.** (1) A person is guilty of obstructing the taking of fish or wildlife if the person:

(a) Harasses, drives, or disturbs fish or wildlife with the intent of disrupting lawful pursuit or taking thereof; or

(b) Harasses, intimidates, or interferes with an individual engaged in the lawful taking of fish or wildlife or lawful predator control with the intent of disrupting lawful pursuit or taking thereof.

(2) Obstructing the taking of fish or wildlife is a gross misdemeanor.

(3) It is an affirmative defense to a prosecution for obstructing the taking of fish or wildlife that the person charged was:

(a) Interfering with a person engaged in hunting outside the legally established hunting season; or

(b) Preventing or attempting to prevent unauthorized trespass on private property.

(4) The person raising a defense under subsection (3) of this section has the burden of proof by a preponderance of the evidence.

**NEW SECTION. Sec. 25. UNLAWFUL POSTING.** (1) A person is guilty of unlawful posting if the individual posts signs preventing hunting or fishing on any land not owned or leased by the individual, or without the permission of the person who owns, leases, or controls the land posted.

(2) Unlawful posting is a misdemeanor.

**NEW SECTION. Sec. 26. UNLAWFUL USE OF DEPARTMENT LANDS OR FACILITIES.** (1) A person is guilty of unlawful use of department lands or facilities if the person enters upon, uses, or remains upon department lands or facilities in violation of any rule of the department.

(2) Unlawful use of department lands or facilities is a misdemeanor.

**NEW SECTION. Sec. 27. SPOTLIGHTING BIG GAME.** (1) A person is guilty of spotlighting big game in the second degree if the person hunts big game with the aid of a spotlight or other artificial light while in possession or control of a firearm, bow and arrow, or cross bow.

(2) A person is guilty of spotlighting big game in the first degree if:

(a) The person has any prior conviction for gross misdemeanor or felony for a crime under this title involving big game including but not limited to subsection (1) of this section or section 10 of this act; and

(b) Within ten years of the date that such prior conviction was entered the person commits the act described by subsection (1) of this section.

(3)(a) Spotlighting big game in the second degree is a gross misdemeanor.

(b) Spotlighting big game in the first degree is a class C felony. Upon conviction, the department shall order suspension of all privileges to hunt wildlife for a period of two years.

**NEW SECTION. Sec. 28. UNLAWFUL USE OR POSSESSION OF A LOADED FIREARM.** (1) A person is guilty of unlawful possession of a loaded firearm in a motor vehicle if:

(a) The person carries, transports, conveys, possesses, or controls a rifle or shotgun in a motor vehicle; and

(b) The rifle or shotgun contains shells or cartridges in the magazine or chamber, or is a muzzle-loading firearm that is loaded and capped or primed.

(2) A person is guilty of unlawful use of a loaded firearm if the person negligently shoots a firearm from, across, or along the maintained portion of a public highway.

(3) Unlawful possession of a loaded firearm in a motor vehicle is a misdemeanor.

(4) This section does not apply if the person:

(a) Is a law enforcement officer who is authorized to carry a firearm and is on duty within the officer's respective jurisdiction;

(b) Possesses a disabled hunter's permit as provided by RCW 77.32.237 and complies with all rules of the department concerning hunting by persons with disabilities.

(5) For purposes of this section, a firearm shall not be considered loaded if the detachable clip or magazine is not inserted in or attached to the firearm.

**NEW SECTION. Sec. 29. UNLAWFULLY AVOIDING WILDLIFE CHECK STATIONS OR FIELD INSPECTIONS.** (1) A person is guilty of unlawfully avoiding wildlife check stations or field inspections if the person fails to:

(a) Obey check station signs;

(b) Stop and report at a check station if directed to do so by a uniformed fish and wildlife officer; or

(c) Produce for inspection upon request by a fish and wildlife officer: (i) Hunting or fishing equipment; (ii) seaweed, fish, shellfish, or wildlife; or (iii) licenses, permits, tags, stamps, or catch record cards required by this title or Title 75 RCW.

(2) Unlawfully avoiding wildlife check stations or field inspections is a gross misdemeanor.

(3) Wildlife check stations may not be established upon interstate highways or state routes.

**NEW SECTION. Sec. 30. UNLAWFUL USE OF DOGS—PUBLIC NUISANCE.** (1) A person is guilty of unlawful use of dogs if the person:

(a) Negligently fails to prevent a dog under the person's control from pursuing or injuring deer, elk, or an animal classified as endangered under this title;

(b) Uses the dog to hunt deer or elk; or

(c) During the closed season for a species of game animal or game bird, negligently fails to prevent the dog from pursuing such animal or destroying the nest of a game bird.

(2) Unlawful use of dogs is a misdemeanor. A dog that is the basis for a violation of this section may be declared a public nuisance.

**NEW SECTION. Sec. 31. UNLAWFUL RELEASE OF FISH OR WILDLIFE.** (1)(a) A person is guilty of unlawfully releasing, planting, or placing fish or wildlife if the person knowingly releases, plants, or places live fish, wildlife, or aquatic plants within the state, except for a release of game fish into

private waters for which a game fish stocking permit has been obtained or the planting of food fish or shellfish by permit of the commission.

(b) A violation of this subsection is a gross misdemeanor. In addition, the department shall order the person to pay all costs the department incurred in capturing, killing, or controlling the fish or wildlife released or its progeny. This does not affect the existing authority of the department to bring a separate civil action to recover costs of capturing, killing, controlling the fish or wildlife released or their progeny, or restoration of habitat necessitated by the unlawful release.

(2)(a) A person is guilty of unlawful release of deleterious exotic wildlife if the person knowingly releases, plants, or places live fish or wildlife within the state and such fish or wildlife has been classified as deleterious exotic wildlife by rule of the commission.

(b) A violation of this subsection is a class C felony. In addition, the department shall also order the person to pay all costs the department incurred in capturing, killing, or controlling the fish or wildlife released or its progeny. This does not affect the existing authority of the department to bring a separate civil action to recover costs of capturing, killing, controlling the fish or wildlife released or their progeny, or restoration of habitat necessitated by the unlawful release.

**NEW SECTION. Sec. 32. ENGAGING IN COMMERCIAL WILDLIFE ACTIVITY WITHOUT A LICENSE.** (1) A person is guilty of engaging in commercial wildlife activity without a license if the person:

(a) Deals in raw furs for commercial purposes and does not hold a fur dealer license required by chapter 77.32 RCW;

(b) Practices taxidermy for profit and does not hold a taxidermy license required by chapter 77.32 RCW; or

(c) Operates a game farm without a license required by chapter 77.32 RCW.

(2) Engaging in commercial wildlife activities without a license is a gross misdemeanor.

**NEW SECTION. Sec. 33. UNLAWFUL USE OF A COMMERCIAL WILDLIFE LICENSE.** (1) A person who holds a fur buyer's license or taxidermy license is guilty of unlawful use of a commercial wildlife license if the person:

(a) Fails to have the license in possession while engaged in fur buying or practicing taxidermy for commercial purposes; or

(b) Violates any rule of the department regarding the use, possession, display, or presentation of the taxidermy or fur buyer's license.

(2) Unlawful use of a commercial wildlife license is a misdemeanor.

**NEW SECTION. Sec. 34. UNLAWFUL TRAPPING.** (1) A person is guilty of unlawful trapping if the person:

(a) Sets out traps that are capable of taking wild animals, game animals, or furbearing mammals and does not possess all licenses, tags, or permits required under this title; or

(b) Violates any rule of the commission or director regarding seasons, bag or possession limits, closed areas including game reserves, closed times, or any other rule governing the trapping of wild animals.

(2) Unlawful trapping is a misdemeanor.

**NEW SECTION. Sec. 35. COMMERCIAL FISHING WITHOUT A LICENSE.** (1) A person is guilty of commercial fishing without a license in the second degree if the person fishes for, takes, or delivers food fish, shellfish, or game fish while acting for commercial purposes and:

(a) The person does not hold a fishery license or delivery license under chapter 75.28 RCW for the food fish or shellfish; or

(b) The person is not a licensed operator designated as an alternate operator on a fishery or delivery license under chapter 75.28 RCW for the food fish or shellfish.

(2) A person is guilty of commercial fishing without a license in the first degree if the person commits the act described by subsection (1) of this section and:

(a) The violation involves taking, delivery, or possession of food fish or shellfish with a value of two hundred fifty dollars or more; or

(b) The violation involves taking, delivery, or possession of food fish or shellfish from an area that was closed to the taking of such food fish or shellfish by any statute or rule.

(3)(a) Commercial fishing without a license in the second degree is a gross misdemeanor.

(b) Commercial fishing without a license in the first degree is a class C felony.

**NEW SECTION. Sec. 36. COMMERCIAL FISH GUIDING OR CHARTERING WITHOUT A LICENSE.** (1) A person is guilty of commercial fish guiding or chartering without a license if:

(a) The person operates a charter boat and does not hold the charter boat license required for the food fish taken;

(b) The person acts as a professional salmon guide and does not hold a professional salmon guide license; or

(c) The person acts as a game fish guide and does not hold a professional game fish guide license.

(2) Commercial fish guiding or chartering without a license is a gross misdemeanor.

**NEW SECTION. Sec. 37. COMMERCIAL FISHING USING UNLAWFUL GEAR OR METHODS.** (1) A person is guilty of commercial fishing using unlawful gear or methods if the person acts for commercial purposes and takes or fishes for any fish or shellfish using any gear or method in violation of a rule of the department specifying, regulating, or limiting the gear or method for taking, fishing, or harvesting of such fish or shellfish.

(2) Commercial fishing using unlawful gear or methods is a gross misdemeanor.

**NEW SECTION. Sec. 38. UNLAWFUL USE OF A NONDESIGNATED VESSEL.** (1) A person who holds a fishery license required by chapter 75.28 RCW, or who holds an operator's license and is designated as an alternate operator on a fishery license required by chapter 75.28 RCW, is guilty of unlawful use of a nondesignated vessel if the person takes, fishes for, or delivers from that fishery using a vessel not designated on the person's license, when vessel designation is required by chapter 75.28 RCW.

(2) Unlawful use of a nondesignated vessel is a gross misdemeanor.

(3) A nondesignated vessel may be used, subject to appropriate notification to the department and in accordance with rules established by the commission, when a designated vessel is inoperative because of accidental damage or mechanical breakdown.

(4) If the person commits the act described by subsection (1) of this section and the vessel designated on the person's fishery license was used by any person in the fishery on the same day, then the violation for using a nondesignated vessel is a class C felony. Upon conviction the department shall order revocation and suspension of all commercial fishing privileges under chapter 75.28 RCW for a period of one year.

**NEW SECTION. Sec. 39. UNLAWFUL USE OF A COMMERCIAL FISHERY LICENSE.** (1) A person who holds a fishery license required by chapter 75.28 RCW, or who holds an operator's license and is designated as an alternate operator on a fishery license required by chapter 75.28 RCW, is guilty of unlawful use of a commercial fishery license if the person:

(a) Does not have the commercial fishery license or operator's license in possession during fishing or delivery; or

(b) Violates any rule of the department regarding the use, possession, display, or presentation of the person's license, decals, or vessel numbers.

(2) Unlawful use of a commercial fishery license is a misdemeanor.

**NEW SECTION. Sec. 40. VIOLATION OF COMMERCIAL FISHING AREA OR TIME.** (1) A person is guilty of violating commercial fishing area or time in the second degree if the person acts for commercial purposes and takes, fishes for, delivers, or receives food fish or shellfish:

(a) At a time not authorized by statute or rule; or

(b) From an area that was closed to the taking of such food fish or shellfish for commercial purposes by statute or rule.

(2) A person is guilty of violating commercial fishing area or time in the first degree if the person commits the act described by subsection (1) of this section and:

(a) The person acted with knowledge that the area or time was not open to the taking or fishing of food fish or shellfish for commercial purposes; and

(b) The violation involved two hundred fifty dollars or more worth of food fish or shellfish.

(3)(a) Violating commercial fishing area or time in the second degree is a gross misdemeanor.

(b) Violating commercial fishing area or time in the first degree is a class C felony.

**NEW SECTION. Sec. 41. FAILURE TO REPORT COMMERCIAL FISH HARVEST OR DELIVERY.** (1) Except as provided in section 45 of this act, a person is guilty of failing to report a commercial fish or shellfish harvest or delivery if the person acts for commercial purposes and takes or delivers any fish or shellfish, and the person:

(a) Fails to sign a fish-receiving ticket that documents the delivery of fish or shellfish or otherwise documents the taking or delivery; or

(b) Fails to report or document the taking, landing, or delivery as required by any rule of the department.

(2) Failing to report a commercial fish harvest or delivery is a gross misdemeanor.

(3) For purposes of this section, "delivery" of fish or shellfish occurs when there is a transfer or conveyance of title or control from the person who took, fished for, or otherwise harvested the fish or shellfish.

**NEW SECTION. Sec. 42. UNLAWFUL TRAFFICKING IN FISH OR WILDLIFE.** (1) A person is guilty of unlawful trafficking in fish or wildlife in the second degree if the person traffics in fish or wildlife with a wholesale value of less than two hundred fifty dollars and:

(a) The fish or wildlife is classified as game, food fish, shellfish, game fish, or protected wildlife and the trafficking is not authorized by statute or rule of the department; or

(b) The fish or wildlife is unclassified and the trafficking violates any rule of the department.

(2) A person is guilty of unlawful trafficking in fish or wildlife in the first degree if the person commits the act described by subsection (1) of this section and:

(a) The fish or wildlife has a value of two hundred fifty dollars or more; or

(b) The fish or wildlife is designated as endangered or deleterious exotic wildlife and such trafficking is not authorized by any statute or rule of the department.

(3)(a) Unlawful trafficking in fish or wildlife in the second degree is a gross misdemeanor.

(b) Unlawful trafficking in fish or wildlife in the first degree is a class C felony.

**NEW SECTION. Sec. 43. ENGAGING IN FISH DEALING ACTIVITY WITHOUT A LICENSE.** (1) A person is guilty of engaging in fish dealing activity without a license in the second degree if the person:

(a) Engages in the commercial processing of fish or shellfish, including custom canning or processing of personal use fish or shellfish and does not hold a wholesale dealer's license required by RCW 75.28.300(1) or 77.32.211 for anadromous game fish;

(b) Engages in the wholesale selling, buying, or brokering of food fish or shellfish and does not hold a wholesale dealer's or buying license required by RCW 75.28.300(2) or 77.32.211 for anadromous game fish;

(c) Is a fisher who lands and sells his or her catch or harvest in the state to anyone other than a licensed wholesale dealer within or outside the state and does not hold a wholesale dealer's license required by RCW 75.28.300(3) or 77.32.211 for anadromous game fish; or

(d) Engages in the commercial manufacture or preparation of fertilizer, oil, meal, caviar, fish bait, or other byproducts from food fish or shellfish and does not hold a wholesale dealer's license required by RCW 75.28.300(4) or 77.32.211 for anadromous game fish.

(2) Engaging in fish dealing activity without a license in the second degree is a gross misdemeanor.

(3) A person is guilty of engaging in fish dealing activity without a license in the first degree if the person commits the act described by subsection (1) of this section and the violation involves fish or shellfish worth two hundred fifty dollars or more. Engaging in fish dealing activity without a license in the first degree is a class C felony.

**NEW SECTION. Sec. 44. UNLAWFUL USE OF FISH BUYING AND DEALING LICENSES.** (1) A person who holds a fish dealer's license required by RCW 75.28.300, an anadromous game fish buyer's license required by RCW 77.32.211, or a fish buyer's license required by RCW 75.28.340 is guilty of unlawful use of fish buying and dealing licenses in the second degree if the person:

(a) Possesses or receives fish or shellfish for commercial purposes worth less than two hundred fifty dollars; and

(b) Fails to document such fish or shellfish with a fish-receiving ticket required by statute or rule of the department.

(2) A person is guilty of unlawful use of fish buying and dealing licenses in the first degree if the person commits the act described by subsection (1) of this section and:

(a) The violation involves fish or shellfish worth two hundred fifty dollars or more;

(b) The person acted with knowledge that the fish or shellfish were taken from a closed area, at a closed time, or by a person not licensed to take such fish or shellfish for commercial purposes; or

(c) The person acted with knowledge that the fish or shellfish were taken in violation of any tribal law.

(3)(a) Unlawful use of fish buying and dealing licenses in the second degree is a gross misdemeanor.



(b) Unlawful use of fish buying and dealing licenses in the first degree is a class C felony. Upon conviction, the department shall suspend all privileges to engage in fish buying or dealing for two years.

**NEW SECTION. Sec. 45. VIOLATING RULES GOVERNING WHOLESALE FISH BUYING AND DEALING.** (1) A person who holds a wholesale fish dealer's license required by RCW 75.28.300, an anadromous game fish buyer's license required by RCW 77.32.211, or a fish buyer's license required by RCW 75.28.340 is guilty of violating rules governing wholesale fish buying and dealing if the person:

(a) Fails to possess or display his or her license when engaged in any act requiring the license;

(b) Fails to display or uses the license in violation of any rule of the department;

(c) Files a signed fish-receiving ticket but fails to provide all information required by rule of the department; or

(d) Violates any other rule of the department regarding wholesale fish buying and dealing.

(2) Violating rules governing wholesale fish buying and dealing is a gross misdemeanor.

**NEW SECTION. Sec. 46. PROVIDING FALSE INFORMATION REGARDING FISH OR WILDLIFE.** (1) A person is guilty of providing false information regarding fish or wildlife if the person knowingly provides false or misleading information required by any statute or rule to be provided to the department regarding the taking, delivery, possession, transportation, sale, transfer, or any other use of fish or wildlife.

(2) Providing false information regarding fish or wildlife is a gross misdemeanor.

**NEW SECTION. Sec. 47. VIOLATING RULES REQUIRING REPORTING OF FISH OR WILDLIFE HARVEST.** (1) A person is guilty of violating rules requiring reporting of fish or wildlife harvest if the person:

(a) Fails to make a harvest log report of a commercial fish or shellfish catch in violation of any rule of the commission or the director;

(b) Fails to maintain a trapper's report or taxidermist ledger in violation of any rule of the commission or the director;

(c) Fails to submit any portion of a big game animal for a required inspection required by rule of the commission or the director; or

(d) Fails to return a catch record card or wildlife harvest report to the department as required by rule of the commission or director.

(2) Violating rules requiring reporting of fish or wildlife harvest is a misdemeanor.

**NEW SECTION. Sec. 48. UNLAWFUL TRANSPORTATION OF FISH OR WILDLIFE.** (1) A person is guilty of unlawful transportation of fish or wildlife in the second degree if the person:

(a) Knowingly imports, moves within the state, or exports fish or wildlife in violation of any rule of the commission or the director governing the transportation or movement of fish or wildlife and the transportation does not involve big game, endangered fish or wildlife, deleterious exotic wildlife, or fish or wildlife having a value greater than two hundred fifty dollars; or

(b) Possesses but fails to affix or notch a big game transport tag as required by rule of the commission or director.

(2) A person is guilty of unlawful transportation of fish or wildlife in the first degree if the person:

(a) Knowingly imports, moves within the state, or exports fish or wildlife in violation of any rule of the commission or the director governing the transportation or movement of fish or wildlife and the transportation involves big game, endangered fish or wildlife, deleterious exotic wildlife, or fish or wildlife with a value of two hundred fifty dollars or more; or

(b) Knowingly transports shellfish, shellstock, or equipment used in commercial culturing, taking, handling, or processing shellfish without a permit required by authority of this title.

(3)(a) Unlawful transportation of fish or wildlife in the second degree is a misdemeanor.

(b) Unlawful transportation of fish or wildlife in the first degree is a gross misdemeanor.

**Sec. 49.** RCW 75.12.320 and 1983 1st ex.s. c 46 s 63 are each amended to read as follows:

(1) Except as provided in subsection ~~((2))~~ (3) of this section, it is unlawful for a person who is not a treaty Indian fisherman to participate in the taking of ~~((food))~~ fish or shellfish in a treaty Indian fishery, or to be on board a vessel, or associated equipment, operating in a treaty Indian fishery. A violation of this subsection is a gross misdemeanor.

(2) A person who violates subsection (1) of this section with the intent of acting for commercial purposes, including any sale of catch, control of catch, profit from catch, or payment for fishing assistance, is guilty of a class C felony. Upon conviction, the department shall order revocation of any license and a one-year suspension of all commercial fishing privileges requiring a license under chapter 75.28 or 75.30 RCW.

(3)(a) The spouse, forebears, siblings, children, and grandchildren of a treaty Indian fisherman may assist the fisherman in exercising treaty Indian fishing rights when the treaty Indian fisherman is present at the fishing site.

(b) Other treaty Indian fishermen with off-reservation treaty fishing rights in the same usual and accustomed places, whether or not the fishermen are members of the same tribe or another treaty tribe, may assist a treaty Indian fisherman in exercising treaty Indian fishing rights when the treaty Indian fisherman is present at the fishing site.

(c) Biologists approved by the department may be on board a vessel operating in a treaty Indian fishery.

~~((3))~~ (4) For the purposes of this section:

(a) "Treaty Indian fisherman" means a person who may exercise treaty Indian fishing rights as determined under *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon 1969), and post-trial orders of those courts;

(b) "Treaty Indian fishery" means a fishery open to only treaty Indian fishermen by tribal or federal regulation;

(c) "To participate" and its derivatives mean an effort to operate a vessel or fishing equipment, provide immediate supervision in the operation of a vessel or fishing equipment, or otherwise assist in the fishing operation, ~~((or))~~ to claim possession of a share of the catch, or to represent that the catch was lawfully taken in an Indian fishery.

~~((4))~~ (5) A violation of this section ~~((involving salmon))~~ constitutes illegal fishing and is subject to the ~~((sanctions provided under RCW 75.10.130))~~ suspensions provided for commercial fishing violations.

**NEW SECTION. Sec. 50. UNLAWFUL USE OF NETS TO TAKE FISH.**

(1) A person is guilty of unlawful use of a net to take fish in the second degree if the person:

(a) Lays, sets, uses, or controls a net or other device or equipment capable of taking fish from the waters of this state, except if the person has a valid license for such fishing gear from the director under this title and is acting in accordance with all rules of the commission and director; or

(b) Fails to return unauthorized fish to the water immediately while otherwise lawfully operating a net under a valid license.

(2) A person is guilty of unlawful use of a net to take fish in the first degree if the person:

(a) Commits the act described by subsection (1) of this section; and

(b) The violation occurs within five years of entry of a prior conviction for a gross misdemeanor or felony under this title or Title 75 RCW involving fish, other than a recreational fishing violation, or involving unlawful use of nets.

(3)(a) Unlawful use of a net to take fish in the second degree is a gross misdemeanor. Upon conviction, the department shall revoke any license held under this title or Title 75 RCW allowing commercial net fishing used in connection with the crime.

(b) Unlawful use of a net to take fish in the first degree is a class C felony. Upon conviction, the department shall order a one-year suspension of all commercial fishing privileges requiring a license under this title or Title 75 RCW.

(4) Notwithstanding subsections (1) and (2) of this section, it is lawful to use a landing net to land fish otherwise legally hooked.

**NEW SECTION. Sec. 51. UNLAWFUL USE OF COMMERCIAL FISHING VESSEL FOR RECREATIONAL OR CHARTER FISHING.** (1) A person is guilty of unlawful use of a commercial fishing vessel, except as may be

authorized by rule of the commission, for recreational or charter fishing if the person uses, operates, or controls a vessel on the same day for both:

- (a) Charter or recreational fishing; and
- (b) Commercial fishing or shellfish harvesting.

(2) Unlawful use of a commercial fishing vessel for recreational or charter fishing is a gross misdemeanor.

**NEW SECTION. Sec. 52. UNLAWFUL HYDRAULIC PROJECT ACTIVITIES.** (1) A person is guilty of unlawfully undertaking hydraulic project activities if the person constructs any form of hydraulic project or performs other work on a hydraulic project and:

- (a) Fails to have a hydraulic project approval required under chapter 75.20 RCW for such construction or work; or
- (b) Violates any requirements or conditions of the hydraulic project approval for such construction or work.

(2) Unlawfully undertaking hydraulic project activities is a gross misdemeanor.

**NEW SECTION. Sec. 53. UNLAWFUL FAILURE TO USE OR MAINTAIN APPROVED FISH GUARD ON WATER DIVERSION DEVICE.**

(1) A person is guilty of unlawful failure to use or maintain an approved fish guard on a diversion device if the person owns, controls, or operates a device used for diverting or conducting water from a lake, river, or stream and:

- (a) The device is not equipped with a fish guard, screen, or bypass approved by the director as required by RCW 75.20.040 or 77.16.220; or
- (b) The person knowingly fails to maintain or operate an approved fish guard, screen, or bypass so as to effectively screen or prevent fish from entering the intake.

(2) Unlawful failure to use or maintain an approved fish guard, screen, or bypass on a diversion device is a gross misdemeanor. Following written notification to the person from the department that there is a violation, each day that a diversion device is operated without an approved or maintained fish guard, screen, or bypass is a separate offense.

**NEW SECTION. Sec. 54. UNLAWFUL FAILURE TO PROVIDE, MAINTAIN, OR OPERATE FISHWAY FOR DAM OR OTHER OBSTRUCTION.** (1) A person is guilty of unlawful failure to provide, maintain, or operate a fishway for dam or other obstruction if the person owns, operates, or controls a dam or other obstruction to fish passage on a river or stream and:

- (a) The dam or obstruction is not provided with a durable and efficient fishway approved by the director as required by RCW 75.20.060;
- (b) Fails to maintain a fishway in efficient operating condition; or
- (c) Fails to continuously supply a fishway with a sufficient supply of water to allow the free passage of fish.

(2) Unlawful failure to provide, maintain, or operate a fishway for dam or other obstruction is a gross misdemeanor. Following written notification to the

person from the department that there is a violation, each day of unlawful failure to provide, maintain, or operate a fishway is a separate offense.

**NEW SECTION. Sec. 55. UNLAWFUL USE OF SCIENTIFIC PERMIT.**

(1) A person is guilty of unlawful use of a scientific permit if the person:

(a) Violates any terms or conditions of a scientific permit issued by the director;

(b) Buys or sells fish or wildlife taken with a scientific permit; or

(c) Violates any rule of the commission or the director applicable to the issuance or use of scientific permits.

(2) Unlawful use of a scientific permit is a gross misdemeanor.

**NEW SECTION. Sec. 56. UNLAWFUL HUNTING OR FISHING CONTESTS.** (1) A person is guilty of unlawfully holding a hunting or fishing contest if the person:

(a) Conducts, holds, or sponsors a hunting contest, a fishing contest involving game fish, or a competitive field trial using live wildlife without the permit required by RCW 77.32.211; or

(b) Violates any rule of the commission or the director applicable to a hunting contest, fishing contest involving game fish, or a competitive field trial using live wildlife.

(2) Unlawfully holding a hunting or fishing contest is a misdemeanor.

**NEW SECTION. Sec. 57. UNLAWFUL OPERATION OF A GAME FARM.** (1) A person is guilty of unlawful operation of a game farm if the person (a) operates a game farm without the license required by RCW 77.32.211; or (b) violates any rule of the commission or the director applicable to game farms under RCW 77.12.570, 77.12.580, and 77.12.590.

(2) Unlawful operation of a game farm is a gross misdemeanor.

**NEW SECTION. Sec. 58. VIOLATION OF A RULE REGARDING INSPECTION AND CONTROL OF AQUATIC FARMS.** (1) A person is guilty of violating a rule regarding inspection and disease control of aquatic farms if the person:

(a) Violates any rule adopted under chapter 75.58 RCW regarding the inspection and disease control program for an aquatic farm; or

(b) Fails to register or report production from an aquatic farm as required by chapter 75.58 RCW.

(2) A violation of a rule regarding inspection and disease control of aquatic farms is a misdemeanor.

**NEW SECTION. Sec. 59. UNLAWFUL PURCHASE OR USE OF A LICENSE.** (1) A person is guilty of unlawful purchase or use of a license in the second degree if the person buys, holds, uses, displays, transfers, or obtains any license, tag, permit, or approval required by this title or Title 75 RCW and the person:

(a) Uses false information to buy, hold, use, display, or obtain a license, permit, tag, or approval;

(b) Acquires, holds, or buys in excess of one license, permit, or tag for a license year if only one license, permit, or tag is allowed per license year;

(c) Uses or displays a license, permit, tag, or approval that was issued to another person;

(d) Permits or allows a license, permit, tag, or approval to be used or displayed by another person not named on the license, permit, tag, or approval;

(e) Acquires or holds a license while privileges for the license are revoked or suspended.

(2) A person is guilty of unlawful purchase or use of a license in the first degree if the person commits the act described by subsection (1) of this section and the person was acting with intent that the license, permit, tag, or approval be used for any commercial purpose. A person is presumed to be acting with such intent if the violation involved obtaining, holding, displaying, or using a license or permit for participation in any commercial fishery issued under this title or Title 75 RCW or a license authorizing fish or wildlife buying, trafficking, or wholesaling.

(3)(a) Unlawful purchase or use of a license in the second degree is a gross misdemeanor. Upon conviction, the department shall revoke any unlawfully used or held licenses and order a two-year suspension of participation in the activities for which the person unlawfully obtained, held, or used a license.

(b) Unlawful purchase or use of a license in the first degree is a class C felony. Upon conviction, the department shall revoke any unlawfully used or held licenses and order a five-year suspension of participation in any activities for which the person unlawfully obtained, held, or used a license.

(4) For purposes of this section, a person "uses" a license, permit, tag, or approval if the person engages in any activity authorized by the license, permit, tag, or approval held or possessed by the person. Such uses include but are not limited to fishing, hunting, taking, trapping, delivery or landing fish or wildlife, and selling, buying, or wholesaling of fish or wildlife.

(5) Any license obtained in violation of this section is void upon issuance and is of no legal effect.

**NEW SECTION. Sec. 60. UNLAWFUL HUNTING OR FISHING WHEN PRIVILEGES ARE REVOKED OR SUSPENDED.** (1) A person is guilty of unlawful hunting or fishing when privileges are revoked or suspended in the second degree if the person hunts or fishes and the person's privilege to engage in such hunting or fishing were revoked or suspended by any court or the department.

(2) A person is guilty of unlawful hunting or fishing when privileges are revoked or suspended in the first degree if the person commits the act described by subsection (1) of this section and:

(a) The suspension of privileges that was violated was a permanent suspension;

(b) The person takes or possesses more than two hundred fifty dollars' worth of unlawfully taken food fish, wildlife, game fish, seaweed, or shellfish; or

(c) The violation involves the hunting, taking, or possession of fish or wildlife classified as endangered or threatened or big game.

(3)(a) Unlawful hunting or fishing when privileges are revoked or suspended in the second degree is a gross misdemeanor. Upon conviction, the department shall order permanent suspension of the person's privileges to engage in such hunting or fishing activities.

(b) Unlawful hunting or fishing when privileges are revoked or suspended in the first degree is a class C felony. Upon conviction, the department shall order permanent suspension of all privileges to hunt, fish, trap, or take wildlife, food fish, or shellfish.

(4) As used in this section, hunting includes trapping with a trapping license.

**NEW SECTION. Sec. 61. UNLAWFUL INTERFERING IN DEPARTMENT OPERATIONS.** (1) A person is guilty of unlawful interfering in department operations if the person prevents department employees from carrying out duties authorized by this title or Title 75 RCW, including but not limited to interfering in the operation of department vehicles, vessels, or aircraft.

(2) Unlawful interfering in department operations is a gross misdemeanor.

**NEW SECTION. Sec. 62. CRIMINAL WILDLIFE PENALTY ASSESSMENT FOR ILLEGALLY TAKEN OR POSSESSED WILDLIFE.** (1) If a person is convicted of violating section 10 of this act and that violation results in the death of wildlife listed in this section, the court shall require payment of the following amounts for each animal killed or possessed. This shall be a criminal wildlife penalty assessment that shall be paid to the clerk of the court and distributed each month to the state treasurer for deposit in the public safety and education account.

- (a) Moose, mountain sheep, mountain goat, and all wildlife species classified as endangered by rule of the commission, except for mountain caribou and grizzly bear as listed under (d) of this subsection . . . \$ 4,000
- (b) Elk, deer, black bear, and cougar . . . . . \$ 2,000
- (c) Trophy animal elk and deer . . . . . \$ 6,000
- (d) Mountain caribou, grizzly bear, and trophy animal mountain sheep . . . . . \$12,000

(2) No forfeiture of bail may be less than the amount of the bail established for hunting during closed season plus the amount of the criminal wildlife penalty assessment in subsection (1) of this section.

(3) For the purpose of this section a "trophy animal" is:

- (a) A buck deer with four or more antler points on both sides, not including eyeguards;
- (b) A bull elk with five or more antler points on both sides, not including eyeguards; or
- (c) A mountain sheep with a horn curl of three-quarter curl or greater.

For purposes of this subsection, "eyeguard" means an antler protrusion on the main beam of the antler closest to the eye of the animal.

(4) If two or more persons are convicted of illegally possessing wildlife in subsection (1) of this section, the criminal wildlife penalty assessment shall be imposed on them jointly and separately.

(5) The criminal wildlife penalty assessment shall be imposed regardless of and in addition to any sentence, fines, or costs otherwise provided for violating any provision of this title. The criminal wildlife penalty assessment shall be included by the court in any pronouncement of sentence and may not be suspended, waived, modified, or deferred in any respect. This section may not be construed to abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

(6) A defaulted criminal wildlife penalty assessment may be collected by any means authorized by law for the enforcement of orders of the court or collection of a fine or costs, including but not limited to vacation of a deferral of sentencing or vacation of a suspension of sentence.

(7) A person assessed a criminal wildlife penalty assessment under this section shall have his or her hunting license revoked and all hunting privileges suspended until the penalty assessment is paid through the registry of the court in which the penalty assessment was assessed.

**NEW SECTION. Sec. 63. DISPOSITION OF FORFEITED WILDLIFE AND ARTICLES.** (1) Unless otherwise provided in this title or Title 75 RCW, fish, shellfish, or wildlife unlawfully taken or possessed, or involved in a violation shall be forfeited to the state upon conviction. Unless already held by, sold, destroyed, or disposed of by the department, the court shall order such fish or wildlife to be delivered to the department. Where delay will cause loss to the value of the property and a ready wholesale buying market exists, the department may sell property to a wholesale buyer at a fair market value.

(2) The department may use, sell, or destroy any other property forfeited by the court or the department. Any sale of other property shall be at public auction or after public advertisement reasonably designed to obtain the highest price. The time, place, and manner of holding the sale shall be determined by the director. The director may contract for the sale to be through the department of general administration as state surplus property, or, except where not justifiable by the value of the property, the director shall publish notice of the sale once a week for at least two consecutive weeks before the sale in at least one newspaper of general circulation in the county in which the sale is to be held. Proceeds of the sale shall be deposited in the state treasury to be credited to the state wildlife fund.

**NEW SECTION. Sec. 64. DEPARTMENT AUTHORITY TO REVOKE LICENSES.** (1) Upon any conviction of any violation of this chapter, the department may revoke any license, tag, or stamp, or other permit involved in the violation or held by the person convicted, in addition to other penalties provided by law.



(2) If the department orders that a license, tag, stamp, or other permit be revoked, that order is effective upon entry of the order and any such revoked license, tag, stamp, or other permit is void as a result of such order of revocation. The department shall order such license, tag, stamp, or other permit turned over to the department, and shall order the person not to acquire a replacement or duplicate for the remainder of the period for which the revoked license, tag, stamp, or other permit would have been valid. During this period when a license is revoked, the person is subject to punishment under this chapter. If the person appeals the sentence by the court, the revocation shall be effective during the appeal.

(3) If an existing license, tag, stamp, or other permit is voided and revoked under this chapter, the department and its agents shall not be required to refund or restore any fees, costs, or money paid for the license, nor shall any person have any right to bring a collateral appeal under chapter 34.05 RCW to attack the department order.

**NEW SECTION. Sec. 65. DEPARTMENT AUTHORITY TO SUSPEND PRIVILEGES—FORM AND PROCEDURE.** (1) If any crime in this chapter is punishable by a suspension of privileges, then the department shall issue an order that specifies the privileges suspended and period when such suspension shall begin and end. The department has no authority to issue licenses, permits, tags, or stamps for the suspended activity until the suspension ends and any license, tag, stamp, or other permission obtained in violation of an order of suspension is void and ineffective.

(2) A court sentence may include a suspension of privileges only if grounds are provided by statute. There is no right to seek reinstatement of privileges from the department during a period of court-ordered suspension.

(3) If this chapter makes revocation or suspension of privileges mandatory, then the department shall impose the punishment in addition to any other punishments authorized by law.

**NEW SECTION. Sec. 66. GROUNDS FOR DEPARTMENT REVOCATION AND SUSPENSION OF PRIVILEGES.** The department shall impose revocation and suspension of privileges upon conviction in the following circumstances:

(1) If directed by statute for an offense;

(2) If the department finds that actions of the defendant demonstrated a willful or wanton disregard for conservation of fish or wildlife. Such suspension of privileges may be permanent;

(3) If a person is convicted twice within ten years for a violation involving unlawful hunting, killing, or possessing big game, the department shall order revocation and suspension of all hunting privileges for two years. RCW 77.16.020 or 77.16.050 as it existed before the effective date of this section may comprise one of the convictions constituting the basis for revocation and suspension under this subsection;

(4) If a person is convicted three times in ten years of any violation of recreational hunting or fishing laws or rules, the department shall order a revocation and suspension of all recreational hunting and fishing privileges for two years;

(5) If a person is convicted twice within five years of a gross misdemeanor or felony involving unlawful commercial fish or shellfish harvesting, buying, or selling, the department shall impose a revocation and suspension of the person's commercial fishing privileges for one year. A commercial fishery license suspended under this subsection may not be used by an alternate operator or transferred during the period of suspension.

**Sec. 67.** RCW 77.16.135 and 1995 1st sp.s. c 2 s 43 are each amended to read as follows:

(1) The commission shall revoke all licenses and order a ten-year suspension of all privileges extended under ((Title 77 RCW)) the authority of the department of a person convicted of assault on a ((state wildlife agent)) fish and wildlife officer or other law enforcement officer provided that:

(a) The ((wildlife agent)) fish and wildlife officer or other law enforcement officer was on duty at the time of the assault; and

(b) The ((wildlife agent)) fish and wildlife officer or other law enforcement officer was enforcing the provisions of this title ((77 RCW)).

(2) For the purposes of this section, the definition of assault includes:

(a) RCW 9A.32.030; murder in the first degree;

(b) RCW 9A.32.050; murder in the second degree;

(c) RCW 9A.32.060; manslaughter in the first degree;

(d) RCW 9A.32.070; manslaughter in the second degree;

(e) RCW 9A.36.011; assault in the first degree;

(f) RCW 9A.36.021; assault in the second degree; and

(g) RCW 9A.36.031; assault in the third degree.

~~((3) For the purposes of this section, a conviction includes:~~

~~—(a) A determination of guilt by the court;~~

~~—(b) The entering of a guilty plea to the charge or charges by the accused;~~

~~—(c) A forfeiture of bail or a vacation of bail posted to the court; or~~

~~—(d) The imposition of a deferred or suspended sentence by the court.~~

~~(4) No license described under Title 77 RCW shall be reissued to a person violating this section for a minimum of ten years, at which time a person may petition the director for a reinstatement of his or her license or licenses. The ten-year period shall be tolled during any time the convicted person is incarcerated in any state or local correctional or penal institution, in community supervision, or home detention for an offense under this section. Upon review by the director, and if all provisions of the court that imposed sentencing have been completed, the director may reinstate in whole or in part the licenses and privileges under Title 77 RCW.)~~

**NEW SECTION. Sec. 68. DIRECTOR'S AUTHORITY TO SUSPEND PRIVILEGES.** (1) If a person shoots another person or domestic livestock while hunting, the director shall suspend all hunting privileges for three years. If the shooting of another person or livestock is the result of criminal negligence or reckless or intentional conduct, then the person's privileges shall be suspended for ten years. The suspension may be continued beyond these periods if damages owed to the victim or livestock owner have not been paid by the suspended person.

(2) If a person commits any assault upon employees, agents, or personnel acting for the department, the director shall suspend hunting or fishing privileges for ten years.

(3) Within twenty days of service of an order suspending privileges or imposing conditions under this section, a person may petition for administrative review under chapter 34.05 RCW by serving the director with a petition for review. The order is final and unappealable if there is no timely petition for administrative review.

(4) The commission may by rule authorize petitions for reinstatement of administrative suspensions and define circumstances under which reinstatement will be allowed.

**NEW SECTION. Sec. 69. CIVIL FORFEITURE OF PROPERTY USED FOR VIOLATION OF THIS CHAPTER.** (1) Fish and wildlife officers and ex officio fish and wildlife officers may seize without warrant boats, airplanes, vehicles, gear, appliances, or other articles they have probable cause to believe have been used in violation of this chapter. However, fish and wildlife officers may not seize any item or article, other than for evidence, if under the circumstances, it is reasonable to conclude that the violation was inadvertent. The property seized is subject to forfeiture to the state under this section regardless of ownership. Property seized may be recovered by its owner by depositing into court a cash bond equal to the value of the seized property but not more than twenty-five thousand dollars. Such cash bond is subject to forfeiture in lieu of the property. Forfeiture of property seized under this section is a civil forfeiture against property intended to be a remedial civil sanction.

(2) In the event of a seizure of property under this section, jurisdiction to begin the forfeiture proceedings shall commence upon seizure. Within fifteen days following the seizure, the seizing authority shall serve a written notice of intent to forfeit property on the owner of the property seized and on any person having any known right or interest in the property seized. Notice may be served by any method authorized by law or court rule, including service by certified mail with return receipt requested. Service by mail is deemed complete upon mailing within the fifteen-day period following the seizure.

(3) Persons claiming a right of ownership or right to possession of property are entitled to a hearing to contest forfeiture. Such a claim shall specify the claim of ownership or possession and shall be made in writing and served on the director within forty-five days of the seizure. If the seizing authority has

complied with notice requirements and there is no claim made within forty-five days, then the property shall be forfeited to the state.

(4) If any person timely serves the director with a claim to property, the person shall be afforded an opportunity to be heard as to the person's claim or right. The hearing shall be before the director or director's designee, or before an administrative law judge appointed under chapter 34.12 RCW, except that a person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the property seized is more than five thousand dollars.

(5) The hearing to contest forfeiture and any subsequent appeal shall be as provided for in Title 34 RCW. The seizing authority has the burden to demonstrate that it had reason to believe the property was held with intent to violate or was used in violation of this title or rule of the commission or director. The person contesting forfeiture has the burden of production and proof by a preponderance of evidence that the person owns or has a right to possess the property and:

(a) That the property was not held with intent to violate or used in violation of this title or Title 75 RCW; or

(b) If the property is a boat, airplane, or vehicle, that the illegal use or planned illegal use of the boat, airplane, or vehicle occurred without the owner's knowledge or consent, and that the owner acted reasonably to prevent illegal uses of such boat, airplane, or vehicle.

(6) A forfeiture of a conveyance encumbered by a perfected security interest is subject to the interest of the secured party if the secured party neither had knowledge nor consented to the act or omission. No security interest in seized property may be perfected after seizure.

(7) If seized property is forfeited under this section the department may retain it for official use unless the property is required to be destroyed, or upon application by any law enforcement agency of the state, release such property to the agency for the use of enforcing this title, or sell such property, and deposit the proceeds to the wildlife fund, as provided for in RCW 77.12.170.

**Sec. 70.** RCW 75.08.011 and 1996 c 267 s 2 are each amended to read as follows:

As used in this title or Title 77 RCW or rules ~~((of the department))~~ adopted under those titles, unless the context clearly requires otherwise:

(1) "Commission" means the fish and wildlife commission.

(2) "Director" means the director of fish and wildlife.

(3) "Department" means the department of fish and wildlife.

(4) "Person" means an individual or a public or private entity or organization. The term "person" includes local, state, and federal government agencies, and all business organizations, including corporations and partnerships.

(5) ~~((Fisheries patrol))~~ Fish and wildlife officer means a person appointed and commissioned by the commission, with authority to enforce this title, rules of the department, and other statutes as prescribed by the legislature. ~~((Fisheries~~

~~patrol~~) Fish and wildlife officers are peace officers. Fish and wildlife officer includes a person commissioned before the effective date of this section as a fisheries patrol officer.

(6) "Ex officio (~~fisheries patrol~~) fish and wildlife officer" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio (~~fisheries patrol~~) fish and wildlife officer" also includes (~~wildlife agents~~) special agents of the national marine fisheries service, United States fish and wildlife special agents, state parks commissioned officers, department of natural resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions.

(7) "To fish," "to harvest," and "to take" and their derivatives mean an effort to kill, injure, harass, or catch (~~food~~) fish or shellfish.

(8) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(9) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

(10) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.

(11) "Resident" means a person who has maintained a permanent place of abode within the state for at least ninety days immediately preceding an application for a license, has established by formal evidence an intent to continue residing within the state, and who is not licensed to hunt or fish as a resident in another state.

(12) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(13) "Food fish" means those species of the classes Osteichthyes, Agnatha, and Chondrichthyes that have been classified and that shall not be fished for except as authorized by rule of the commission. The term "food fish" includes all stages of development and the bodily parts of food fish species.

(14) "Shellfish" means those species of marine and freshwater invertebrates that have been classified and that shall not be taken except as authorized by rule of the commission. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(15) "Salmon" means all species of the genus *Oncorhynchus*, except those classified as game fish in Title 77 RCW, and includes:

| Scientific Name          | Common Name    |
|--------------------------|----------------|
| Oncorhynchus tshawytscha | Chinook salmon |
| Oncorhynchus kisutch     | Coho salmon    |
| Oncorhynchus keta        | Chum salmon    |
| Oncorhynchus gorbuscha   | Pink salmon    |
| Oncorhynchus nerka       | Sockeye salmon |

(16) "Commercial" means related to or connected with buying, selling, or bartering. Fishing for food fish or shellfish with gear unlawful for fishing for personal use, or possessing food fish or shellfish in excess of the limits permitted for personal use are commercial activities.

(17) "To process" and its derivatives mean preparing or preserving food fish or shellfish.

(18) "Personal use" means for the private use of the individual taking the food fish or shellfish and not for sale or barter.

(19) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or reel.

(20) "Open season" means those times, manners of taking, and places or waters established by rule of the commission for the lawful fishing, taking, or possession of food fish or shellfish. "Open season" includes the first and last days of the established time.

(21) "Fishery" means the taking of one or more particular species of food fish or shellfish with particular gear in a particular geographical area.

(22) "Limited-entry license" means a license subject to a license limitation program established in chapter 75.30 RCW.

(23) "Seaweed" means marine aquatic plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free floating form, and includes but is not limited to marine aquatic plants in the classes Chlorophyta, Phaeophyta, and Rhodophyta.

(24) "Fish" includes all species classified as game fish or food fish by statute or rule, as well as all fin fish not currently classified as food fish or game fish if such species exist in state waters. The term "fish" includes all stages of development and the bodily parts of fish species.

Sec. 71. RCW 75.08.160 and 1983 1st ex.s. c 46 s 19 are each amended to read as follows:

The director, ~~((fisheries patrol))~~ fish and wildlife officers, ex officio ~~((fisheries patrol))~~ fish and wildlife officers, and department employees may enter upon any land or waters and remain there while performing their duties without liability for trespass.

It is lawful for aircraft operated by the department to land and take off from the beaches or waters of the state. ~~((It is unlawful for a person to interfere with the operation of these aircraft.))~~

**Sec. 72.** RCW 75.08.274 and 1995 1st sp.s. c 2 s 15 are each amended to read as follows:

~~((Except by permit of))~~ The commission~~((; it is unlawful to))~~ may adopt rules to authorize issuance of permits to take food fish or shellfish for propagation or scientific purposes within state waters.

**Sec. 73.** RCW 75.08.295 and 1995 1st sp.s. c 2 s 17 are each amended to read as follows:

~~((Except by permit of))~~ The commission~~((; it is unlawful to))~~ may adopt rules to authorize issuance of permits to release, plant, or place food fish or shellfish in state waters.

**Sec. 74.** RCW 75.08.300 and 1985 c 457 s 12 are each amended to read as follows:

~~((1) It is unlawful for any))~~ A person other than the United States, an Indian tribe recognized as such by the federal government, the state, a subdivision of the state, or a municipal corporation or an agency of such a unit of government ~~((to))~~ shall not release salmon or steelhead trout into the public waters of the state and subsequently to recapture and commercially harvest such salmon or trout. This section shall not prevent any person from rearing salmon or steelhead trout in pens or in a confined area under circumstances where the salmon or steelhead trout are confined and never permitted to swim freely in open water.

~~((2) A violation of this section constitutes a gross misdemeanor.))~~

**Sec. 75.** RCW 75.12.010 and 1995 1st sp.s. c 2 s 25 are each amended to read as follows:

(1) ~~((Except as provided in this section, it is unlawful to fish commercially for salmon within the waters described in subsection (2) of this section.))~~ The commission may authorize commercial fishing for sockeye salmon within the waters described in subsection (2) of this section only during the period June 10th to July 25th and for other salmon only from the second Monday of September through November 30th, except during the hours between 4:00 p.m. of Friday and 4:00 p.m. of the following Sunday.

(2) All waters east and south of a line commencing at a concrete monument on Angeles Point in Clallam county near the mouth of the Elwha River on which is inscribed "Angeles Point Monument" (latitude 48° 9' 3" north, longitude 123° 33' 01" west of Greenwich Meridian); thence running east on a line 81° 30' true across the flasblight and bell buoy off Partridge Point and thence continued to longitude 122° 40' west; thence north to the southerly shore of Sinclair Island; thence along the southerly shore of the island to the most easterly point of the island; thence 46° true to Carter Point, the most southerly point of Lummi Island; thence northwesterly along the westerly shore line of Lummi Island to where the shore line intersects line of longitude 122° 40' west; thence north to the mainland, including: The southerly portion of Hale Passage, Bellingham Bay, Padilla Bay, Fidalgo Bay, Guemes Channel, Skagit Bay, Similk Bay, Saratoga Passage,

Holmes Harbor, Possession Sound, Admiralty Inlet, Hood Canal, Puget Sound, and their inlets, passages, waters, waterways, and tributaries.

~~(3) (The commission may authorize commercial fishing for sockeye salmon within the waters described in subsection (2) of this section during the period June 10 to July 25 and for other salmon from the second Monday of September through November 30, except during the hours between 4:00 p.m. of Friday and 4:00 p.m. of the following Sunday.~~

~~—(4))~~ The commission may authorize commercial fishing for salmon with gill net gear prior to the second Monday in September within the waters of Hale Passage, Bellingham Bay, Samish Bay, Padilla Bay, Fidalgo Bay, Guemes Channel, Skagit Bay, and Similk Bay, to wit: Those waters northerly and easterly of a line commencing at Stanwood, thence along the south shore of Skagit Bay to Rocky Point on Camano Island; thence northerly to Polnell Point on Whidbey Island.

~~((5))~~ (4) Whenever the commission determines that a stock or run of salmon cannot be harvested in the usual manner, and that the stock or run of salmon may be in danger of being wasted and surplus to natural or artificial spawning requirements, the commission may authorize units of gill net and purse seine gear in any number or equivalents, by time and area, to fully utilize the harvestable portions of these salmon runs for the economic well being of the citizens of this state. Gill net and purse seine gear other than emergency and test gear authorized by the director shall not be used in Lake Washington.

~~((6))~~ (5) The commission may authorize commercial fishing for pink salmon in each odd-numbered year from August 1<sup>st</sup> through September 1<sup>st</sup> in the waters lying inside of a line commencing at the most easterly point of Dungeness Spit and thence projected to Point Partridge on Whidbey Island and a line commencing at Olele Point and thence projected easterly to Bush Point on Whidbey Island.

**Sec. 76.** RCW 75.12.015 and 1995 1st sp.s. c 2 s 26 are each amended to read as follows:

~~(Except as provided in this section, it is unlawful to fish commercially for chinook or coho salmon in the Pacific Ocean and the Straits of Juan de Fuca.))~~

(1) The commission may authorize commercial fishing for coho salmon in the Pacific Ocean and the Straits of Juan de Fuca only from June 16<sup>th</sup> through October 31<sup>st</sup>.

(2) The commission may authorize commercial fishing for chinook salmon in the Pacific Ocean and the Straits of Juan de Fuca only from March 15<sup>th</sup> through October 31<sup>st</sup>.

**Sec. 77.** RCW 75.12.040 and 1993 sp.s. c 2 s 27 are each amended to read as follows:

(1) ~~(It is unlawful to)~~ A person shall not use, operate, or maintain a gill net which exceeds ~~((250 fathoms))~~ 1500 feet in length or a drag seine in the waters of the Columbia river for catching salmon.



(2) ~~((It is unlawful to))~~ A person shall not construct, install, use, operate, or maintain within state waters a pound net, round haul net, lampara net, fish trap, fish wheel, scow fish wheel, set net, weir, or fixed appliance for catching salmon or steelhead. The director may authorize the use of this gear for scientific investigations.

(3) The department, in coordination with the Oregon department of fish and wildlife, shall adopt rules to regulate the use of monofilament in gill net webbing on the Columbia river.

**Sec. 78.** RCW 75.12.132 and 1984 c 80 s 5 are each amended to read as follows:

(1) ~~((It is unlawful to fish for or take salmon commercially with a net within the waters of the tributaries and sloughs described in subsection (2) of this section which flow into or are connected with the Columbia river.~~

~~—(2))~~ The ~~((director))~~ commission shall adopt rules defining geographical boundaries of the following Columbia river tributaries and sloughs:

- (a) Washougal river;
- (b) Camas slough;
- (c) Lewis river;
- (d) Kalama river;
- (e) Cowlitz river;
- (f) Elokomin river;
- (g) Elokomin sloughs;
- (h) Skamokawa sloughs;
- (i) Grays river;
- (j) Deep river;
- (k) Grays bay.

~~((3))~~ (2) The ~~((director))~~ commission may authorize commercial net fishing for salmon in the tributaries and sloughs from September 1<sup>st</sup> to November 30<sup>th</sup> only, if the time, areas, and level of effort are regulated in order to maximize the recreational fishing opportunity while minimizing excess returns of fish to hatcheries. The ~~((director))~~ commission shall not authorize commercial net fishing if a significant catch of steelhead would occur.

**Sec. 79.** RCW 75.12.140 and 1983 1st ex.s. c 46 s 59 are each amended to read as follows:

~~((It is unlawful to fish for salmon with))~~ The commission shall not authorize use of reef net fishing gear ~~((in state waters,))~~ except in the reef net areas described in this section.

(1) Point Roberts reef net fishing area includes those waters within 250 feet on each side of a line projected 129° true from a point at longitude 123° 01' 15" W. latitude 48° 58' 38" N. to a point one mile distant, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6300, published September, 1941, in Washington, D.C., eleventh edition.

(2) Cherry Point reef net fishing area includes those waters inland and inside the 10-fathom line between lines projected  $205^{\circ}$  true from points on the mainland at longitude  $122^{\circ} 44' 54''$  latitude  $48^{\circ} 51' 48''$  and longitude  $122^{\circ} 44' 18''$  latitude  $48^{\circ} 51' 33''$ , a [as] such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(3) Lummi Island reef net fishing area includes those waters inland and inside a line projected from Village Point  $208^{\circ}$  true to a point 900 yards distant, thence  $129^{\circ}$  true to the point of intersection with a line projected  $259^{\circ}$  true from the shore of Lummi Island  $122^{\circ} 40' 42''$  latitude  $48^{\circ} 41' 32''$ , as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition, revised 11-25-57, save and except that there shall be excluded therefrom all waters lying inside of a line projected  $259^{\circ}$  true from a point at  $122^{\circ} 40' 42''$  latitude  $48^{\circ} 41' 32''$  to a point 300 yards distant from high tide, thence in a northerly direction to the United States Coast and Geodetic Survey reference mark number 2, 1941-1950, located on that point on Lummi Island known as Lovers Point, as such descriptions are shown upon the United States Coast and Geodetic Survey map number 6380 as aforesaid. The term "Village Point" as used herein shall be construed to mean a point of location on Village Point, Lummi Island, at the mean high tide line on a true bearing of  $43^{\circ} 53'$  a distance of 457 feet to the center of the chimney of a wood frame house on the east side of the county road. Said chimney and house being described as Village Point Chimney on page 612 of the United States Coast and Geodetic Survey list of geographic positions No. G-5455, Rosario Strait.

(4) Sinclair Island reef net fishing area includes those waters inland and inside a line projected from the northern point of Sinclair Island to Boulder reef, thence  $200^{\circ}$  true to the northwesterly point of Sinclair Island, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(5) Flat Point reef net fishing area includes those waters within a radius of 175 feet of a point off Lopez Island located at longitude  $122^{\circ} 55' 24''$  latitude  $48^{\circ} 32' 33''$ , as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(6) Lopez Island reef net fishing area includes those waters within 400 yards of shore between lines projected true west from points on the shore of Lopez Island at longitude  $122^{\circ} 55' 04''$  latitude  $48^{\circ} 31' 59''$  and longitude  $122^{\circ} 55' 54''$  latitude  $48^{\circ} 30' 55''$ , as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(7) Iceberg Point reef net fishing area includes those waters inland and inside a line projected from Davis Point on Lopez Island to the west point of Long Island, thence to the southern point of Hall Island, thence to the eastern point at

the entrance to Jones Bay, and thence to the southern point at the entrance to Mackaye Harbor on Lopez Island; and those waters inland and inside a line projected  $320^\circ$  from Iceberg Point light on Lopez Island, a distance of 400 feet, thence easterly to the point on Lopez Island at longitude  $122^\circ 53' 00''$  latitude  $48^\circ 25' 39''$ , as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(8) Aleck Bay reef net fishing area includes those waters inland and inside a line projected from the southwestern point at the entrance to Aleck Bay on Lopez Island at longitude  $122^\circ 51' 11''$  latitude  $48^\circ 25' 14''$  southeasterly 800 yards to the submerged rock shown on U.S.G.S. map number 6380, thence northerly to the cove on Lopez Island at longitude  $122^\circ 50' 49''$  latitude  $48^\circ 25' 42''$ , as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(9) Shaw Island reef net fishing area number 1 includes those waters within 300 yards of shore between lines projected true south from points on Shaw Island at longitude  $122^\circ 56' 14''$  latitude  $48^\circ 33' 28''$  and longitude  $122^\circ 57' 29''$  latitude  $48^\circ 32' 58''$ , as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(10) Shaw Island reef net fishing area number 2 includes those waters inland and inside a line projected from Point George on Shaw Island to the westerly point of Neck Point on Shaw Island, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(11) Stuart Island reef net fishing area number 1 includes those waters within 600 feet of the shore of Stuart Island between lines projected true east from points at longitude  $123^\circ 10' 47''$  latitude  $48^\circ 39' 47''$  and longitude  $123^\circ 10' 47''$  latitude  $48^\circ 39' 33''$ , as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(12) Stuart Island reef net fishing area number 2 includes those waters within 250 feet of Gossip Island, also known as Happy Island, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(13) Johns Island reef net fishing area includes those waters inland and inside a line projected from the eastern point of Johns Island to the northwestern point of Little Cactus Island, thence northwesterly to a point on Johns Island at longitude  $123^\circ 09' 24''$  latitude  $48^\circ 39' 59''$ , as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(14) Battleship Island reef net fishing area includes those waters lying within 350 feet of Battleship Island, as such description is shown upon the United States

Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(15) Open Bay reef net fishing area includes those waters lying within 150 feet of shore between lines projected true east from a point on Henry Island at longitude 123° 11' 34 1/2" latitude 48° 35' 27 1/2" at a point 250 feet south, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(16) Mitchell Reef net fishing area includes those waters within a line beginning at the rock shown on U.S.G.S. map number 6380 at longitude 123° 10' 56" latitude 48° 34' 49 1/2", and projected 50 feet northwesterly, thence southwesterly 250 feet, thence southeasterly 300 feet, thence northeasterly 250 feet, thence to the point of beginning, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(17) Smugglers Cove reef fishing area includes those waters within 200 feet of shore between lines projected true west from points on the shore of San Juan Island at longitude 123° 10' 29" latitude 48° 33' 50" and longitude 123° 10' 31" latitude 48° 33' 45", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(18) Andrews Bay reef net fishing area includes those waters lying within 300 feet of the shore of San Juan Island between a line projected true south from a point at the northern entrance of Andrews Bay at longitude 123° 09' 53 1/2" latitude 48° 33' 00" and the cable crossing sign in Andrews Bay, at longitude 123° 09' 45" latitude 48° 33' 04", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(19) Orcas Island reef net fishing area includes those waters inland and inside a line projected true west a distance of 1,000 yards from the shore of Orcas Island at longitude 122° 57' 40" latitude 48° 41' 06" thence northeasterly to a point 500 feet true west of Point Doughty, then true east to Point Doughty, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

Sec. 80. RCW 75.12.210 and 1993 c 20 s 2 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, ~~((it is unlawful to fish for or take salmon with))~~ the commission shall not authorize gear other than troll gear or angling gear for taking salmon within the offshore waters or the waters of the Pacific Ocean over which the state has jurisdiction lying west of the following line: Commencing at the point of intersection of the international boundary line in the Strait of Juan de Fuca and a line drawn between the lighthouse on Tatoosh Island in Clallam County and Bonilla Point on Vancouver Island; thence southerly to the lighthouse on Tatoosh Island; thence southerly to the most westerly point of Cape Flattery; thence southerly along the state shoreline of the Pacific Ocean,

crossing any river mouths at their most westerly points of land, to Point Brown at the entrance to Grays Harbor; thence southerly to Point Chehalis Light on Point Chehalis; thence southerly from Point Chehalis along the state shoreline of the Pacific Ocean to the Cape Shoalwater tower at the entrance to Willapa Bay; thence southerly to Leadbetter Point; thence southerly along the state shoreline of the Pacific Ocean to the inshore end of the North jetty at the entrance to the Columbia River; thence southerly to the knuckle of the South jetty at the entrance to said river.

(2) The ~~((director))~~ commission may authorize the use of nets for taking salmon in the waters described in subsection (1) of this section for scientific investigations.

**Sec. 81.** RCW 75.12.230 and 1983 1st ex.s. c 46 s 61 are each amended to read as follows:

Within the waters described in RCW 75.12.210, ~~((it is unlawful to))~~ a person shall not transport or possess salmon on board a vessel carrying fishing gear of a type other than troll lines or angling gear, unless accompanied by a certificate issued by a state or country showing that the salmon have been lawfully taken within the territorial waters of the state or country.

**Sec. 82.** RCW 75.12.390 and 1989 c 172 s 1 are each amended to read as follows:

The commission shall not authorize commercial bottom trawling for food fish and shellfish ~~((is unlawful))~~ in all areas of Hood Canal south of a line projected from Tala Point to Foulweather Bluff and in Puget Sound south of a line projected from Foulweather Bluff to Double Bluff and including all marine waters east of Whidbey Island and Camano Island.

**Sec. 83.** RCW 75.12.440 and 1993 c 340 s 50 are each amended to read as follows:

~~((It is unlawful to use))~~ The commission shall not authorize any commercial fisher to use more than fifty shrimp pots while commercially fishing for shrimp in that portion of Hood Canal lying south of the Hood Canal floating bridge.

**Sec. 84.** RCW 75.12.650 and 1996 c 267 s 24 are each amended to read as follows:

~~((It is unlawful to fish commercially for salmon using fishing gear not authorized for commercial salmon fishing by rule of the department.))~~ The commission shall not authorize angling gear or other personal use gear for commercial salmon fishing.

**Sec. 85.** RCW 75.20.040 and 1983 1st ex.s. c 46 s 70 are each amended to read as follows:

A diversion device used for conducting water from a lake, river, or stream for any purpose shall be equipped with a fish guard approved by the director to prevent the passage of fish into the diversion device. The fish guard shall be maintained at all times when water is taken into the diversion device. The fish

guards shall be installed at places and times prescribed by the director upon thirty days' notice to the owner of the diversion device. ~~((It is unlawful for the owner of a diversion device to fail to comply with this section.))~~

Each day the diversion device is not equipped with an approved fish guard is a separate offense. If within thirty days after notice to equip a diversion device the owner fails to do so, the director may take possession of the diversion device and close the device until it is properly equipped. Expenses incurred by the department constitute the value of a lien upon the diversion device and upon the real and personal property of the owner. Notice of the lien shall be filed and recorded in the office of the county auditor of the county in which the action is taken.

**Sec. 86.** RCW 75.20.060 and 1983 1st ex.s. c 46 s 72 are each amended to read as follows:

A dam or other obstruction across or in a stream shall be provided with a durable and efficient fishway approved by the director. Plans and specifications shall be provided to the department prior to the director's approval. The fishway shall be maintained in an effective condition and continuously supplied with sufficient water to freely pass fish. ~~((It is unlawful for the owner, manager, agent, or person in charge of the dam or obstruction to fail to comply with this section.))~~

If a person fails to construct and maintain a fishway or to remove the dam or obstruction in a manner satisfactory to the director, then within thirty days after written notice to comply has been served upon the owner, his agent, or the person in charge, the director may construct a fishway or remove the dam or obstruction. Expenses incurred by the department constitute the value of a lien upon the dam and upon the personal property of the person owning the dam. Notice of the lien shall be filed and recorded in the office of the county auditor of the county in which the dam or obstruction is situated. The lien may be foreclosed in an action brought in the name of the state.

If, within thirty days after notice to construct a fishway or remove a dam or obstruction, the owner, his agent, or the person in charge fails to do so, the dam or obstruction is a public nuisance and the director may take possession of the dam or obstruction and destroy it. No liability shall attach for the destruction.

**Sec. 87.** RCW 75.20.100 and 1997 c 385 s 1 and 1997 c 290 s 4 are each reenacted and amended to read as follows:

(1) In the event that any person or government agency desires to construct any form of hydraulic project or perform other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state, such person or government agency shall, before commencing construction or work thereon and to ensure the proper protection of fish life, secure the approval of the department as to the adequacy of the means proposed for the protection of fish life. This approval shall not be unreasonably withheld.

(2)(a) Except as provided in RCW 75.20.1001, the department shall grant or deny approval of a standard permit within forty-five calendar days of the receipt

of a complete application and notice of compliance with any applicable requirements of the state environmental policy act, made in the manner prescribed in this section.

(b) The applicant may document receipt of application by filing in person or by registered mail. A complete application for approval shall contain general plans for the overall project, complete plans and specifications of the proposed construction or work within the mean higher high water line in salt water or within the ordinary high water line in fresh water, and complete plans and specifications for the proper protection of fish life.

(c) The forty-five day requirement shall be suspended if:

(i) After ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project;

(ii) The site is physically inaccessible for inspection; or

(iii) The applicant requests delay. Immediately upon determination that the forty-five day period is suspended, the department shall notify the applicant in writing of the reasons for the delay.

(d) For purposes of this section, "standard permit" means a written permit issued by the department when the conditions under subsections (3) and ~~((6))~~ (5)(b) of this section are not met.

(3)(a) The department may issue an expedited written permit in those instances where normal permit processing would result in significant hardship for the applicant or unacceptable damage to the environment. In cases of imminent danger, the department shall issue an expedited written permit, upon request, for work to repair existing structures, move obstructions, restore banks, protect property, or protect fish resources. Expedited permit requests require a complete written application as provided in subsection (2)(b) of this section and shall be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance.

(b) For the purposes of this subsection, "imminent danger" means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.

(c) The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

(d) The department or the county legislative authority may determine if an imminent danger exists. The county legislative authority shall notify the department, in writing, if it determines that an imminent danger exists.

(4) Approval of a standard permit is valid for a period of up to five years from date of issuance. The permittee must demonstrate substantial progress on construction of that portion of the project relating to the approval within two years of the date of issuance. If the department denies approval, the department shall provide the applicant, in writing, a statement of the specific reasons why and how

the proposed project would adversely affect fish life. Protection of fish life shall be the only ground upon which approval may be denied or conditioned. Chapter 34.05 RCW applies to any denial of project approval, conditional approval, or requirements for project modification upon which approval may be contingent.

~~(5) ((If any person or government agency commences construction on any hydraulic works or projects subject to this section without first having obtained approval of the department as to the adequacy of the means proposed for the protection of fish life, or if any person or government agency fails to follow or carry out any of the requirements or conditions as are made a part of such approval, the person or director of the agency is guilty of a gross misdemeanor. If any such person or government agency is convicted of violating any of the provisions of this section and continues construction on any such works or projects without fully complying with the provisions hereof, such works or projects are hereby declared a public nuisance and shall be subject to abatement as such:~~

~~—(6))~~(a) In case of an emergency arising from weather or stream flow conditions or other natural conditions, the department, through its authorized representatives, shall issue immediately, upon request, oral approval for removing any obstructions, repairing existing structures, restoring stream banks, or to protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written approval prior to commencing work. Conditions of an oral approval to protect fish life shall be established by the department and reduced to writing within thirty days and complied with as provided for in this section. Oral approval shall be granted immediately, upon request, for a stream crossing during an emergency situation.

(b) For purposes of this section and RCW 75.20.103, "emergency" means an immediate threat to life, the public, property, or of environmental degradation.

(c) The department or the county legislative authority may declare and continue an emergency when one or more of the criteria under (b) of this subsection are met. The county legislative authority shall immediately notify the department if it declares an emergency under this subsection.

~~((7))~~ (6) The department shall, at the request of a county, develop five-year maintenance approval agreements, consistent with comprehensive flood control management plans adopted under the authority of RCW 86.12.200, or other watershed plan approved by a county legislative authority, to allow for work on public and private property for bank stabilization, bridge repair, removal of sand bars and debris, channel maintenance, and other flood damage repair and reduction activity under agreed-upon conditions and times without obtaining permits for specific projects.

~~((8))~~ (7) This section shall not apply to the construction of any form of hydraulic project or other work which diverts water for agricultural irrigation or stock watering purposes authorized under or recognized as being valid by the state's water codes, or when such hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in



RCW 84.34.020. These irrigation or stock watering diversion and streambank stabilization projects shall be governed by RCW 75.20.103.

A landscape management plan approved by the department and the department of natural resources under RCW 76.09.350(2), shall serve as a hydraulic project approval for the life of the plan if fish are selected as one of the public resources for coverage under such a plan.

~~((9))~~ (8) For the purposes of this section and RCW 75.20.103, "bed" means the land below the ordinary high water lines of state waters. This definition does not include irrigation ditches, canals, storm water run-off devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered by man.

~~((10))~~ (9) The phrase "to construct any form of hydraulic project or perform other work" does not include the act of driving across an established ford. Driving across streams or on wetted stream beds at areas other than established fords requires approval. Work within the ordinary high water line of state waters to construct or repair a ford or crossing requires approval.

**Sec. 88.** RCW 75.20.103 and 1993 sp.s. c 2 s 32 are each amended to read as follows:

In the event that any person or government agency desires to construct any form of hydraulic project or other work that diverts water for agricultural irrigation or stock watering purposes, or when such hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, and when such diversion or streambank stabilization will use, divert, obstruct, or change the natural flow or bed of any river or stream or will utilize any waters of the state or materials from the stream beds, the person or government agency shall, before commencing construction or work thereon and to ensure the proper protection of fish life, secure a written approval from the department as to the adequacy of the means proposed for the protection of fish life. This approval shall not be unreasonably withheld. Except as provided in RCW 75.20.1001 (~~and 75.20.1002~~), the department shall grant or deny the approval within forty-five calendar days of the receipt of a complete application and notice of compliance with any applicable requirements of the state environmental policy act, made in the manner prescribed in this section. The applicant may document receipt of application by filing in person or by registered mail. A complete application for an approval shall contain general plans for the overall project, complete plans and specifications of the proposed construction or work within ordinary high water line, and complete plans and specifications for the proper protection of fish life. The forty-five day requirement shall be suspended if (1) after ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project; (2) the site is physically inaccessible for inspection; or (3) the applicant requests delay.

Immediately upon determination that the forty-five day period is suspended, the department shall notify the applicant in writing of the reasons for the delay.

An approval shall remain in effect without need for periodic renewal for projects that divert water for agricultural irrigation or stock watering purposes and that involve seasonal construction or other work. Approval for streambank stabilization projects shall remain in effect without need for periodic renewal if the problem causing the need for the streambank stabilization occurs on an annual or more frequent basis. The permittee must notify the appropriate agency before commencing the construction or other work within the area covered by the approval.

The permittee must demonstrate substantial progress on construction of that portion of the project relating to the approval within two years of the date of issuance. If the department denies approval, the department shall provide the applicant, in writing, a statement of the specific reasons why and how the proposed project would adversely affect fish life. Protection of fish life shall be the only ground upon which approval may be denied or conditioned. Issuance, denial, conditioning, or modification shall be appealable to the hydraulic appeals board established in RCW 43.21B.005 within thirty days of the notice of decision. The burden shall be upon the department to show that the denial or conditioning of an approval is solely aimed at the protection of fish life.

The department may, after consultation with the permittee, modify an approval due to changed conditions. The modifications shall become effective unless appealed to the hydraulic appeals board within thirty days from the notice of the proposed modification. The burden is on the department to show that changed conditions warrant the modification in order to protect fish life.

A permittee may request modification of an approval due to changed conditions. The request shall be processed within forty-five calendar days of receipt of the written request. A decision by the department may be appealed to the hydraulic appeals board within thirty days of the notice of the decision. The burden is on the permittee to show that changed conditions warrant the requested modification and that such modification will not impair fish life.

~~((If any person or government agency commences construction on any hydraulic works or projects subject to this section without first having obtained written approval of the department as to the adequacy of the means proposed for the protection of fish life, or if any person or government agency fails to follow or carry out any of the requirements or conditions as are made a part of such approval, the person or director of the agency is guilty of a gross misdemeanor. If any such person or government agency is convicted of violating any of the provisions of this section and continues construction on any such works or projects without fully complying with the provisions hereof, such works or projects are hereby declared a public nuisance and shall be subject to abatement as such.))~~

In case of an emergency arising from weather or stream flow conditions or other natural conditions, the department, through its authorized representatives, shall issue immediately upon request oral approval for removing any obstructions, repairing existing structures, restoring stream banks, or to protect property

threatened by the stream or a change in the stream flow without the necessity of obtaining a written approval prior to commencing work. Conditions of an oral approval shall be reduced to writing within thirty days and complied with as provided for in this section.

For purposes of this chapter, "streambank stabilization" shall include but not be limited to log and debris removal, bank protection (including riprap, jetties, and groins), gravel removal and erosion control.

**Sec. 89.** RCW 75.20.110 and 1995 1st sp.s. c 2 s 27 are each amended to read as follows:

(1) Except for the north fork of the Lewis river and the White Salmon river, all streams and rivers tributary to the Columbia river downstream from McNary dam are established as an anadromous fish sanctuary. This sanctuary is created to preserve and develop the food fish and game fish resources in these streams and rivers and to protect them against undue industrial encroachment.

(2) Within the sanctuary area:

(a) ~~((It is unlawful))~~ The department shall not issue hydraulic project approval to construct a dam greater than twenty-five feet high within the migration range of anadromous fish as determined by the ~~((commission))~~ department.

(b) ~~((Except by order of the commission, it is unlawful to))~~ A person shall not divert water from rivers and streams in quantities that will reduce the respective stream flow below the annual average low flow, based upon data published in United States geological survey reports.

(3) The commission may acquire and abate a dam or other obstruction, or acquire any water right vested on a sanctuary stream or river, which is in conflict with the provisions of subsection (2) of this section.

(4) Subsection (2)(a) of this section does not apply to the sediment retention structure to be built on the North Fork Toutle river by the United States army corps of engineers.

**Sec. 90.** RCW 75.24.080 and 1983 1st ex.s. c 46 s 83 are each amended to read as follows:

The director may designate as "restricted shellfish areas" those areas in which infection or infestation of shellfish is present. ~~((Except by))~~ A permit ~~((of))~~ issued by the director ~~((-it))~~ is ~~((unlawful))~~ required to transplant or transport into or out of a restricted area shellfish or equipment used in culturing, taking, handling, or processing shellfish.

**Sec. 91.** RCW 75.24.100 and 1995 1st sp.s. c 2 s 29 are each amended to read as follows:

(1) ~~((It is unlawful))~~ The department may not authorize a person to take geoduck clams for commercial purposes outside the harvest area designated in a current department of natural resources geoduck harvesting agreement issued under RCW 79.96.080. ~~((It is unlawful to commercially))~~ The department may not authorize commercial harvest of geoduck clams from bottoms that are

shallower than eighteen feet below mean lower low water (0.0. ft.), or that lie in an area bounded by the line of ordinary high tide (mean high tide) and a line two hundred yards seaward from and parallel to the line of ordinary high tide. This section does not apply to the harvest of private sector cultured aquatic products as defined in RCW 15.85.020.

(2) Commercial geoduck harvesting shall be done with a hand-held, manually operated water jet or suction device guided and controlled from under water by a diver. Periodically, the commission shall determine the effect of each type or unit of gear upon the geoduck population or the substrate they inhabit. The commission may require modification of the gear or stop its use if it is being operated in a wasteful or destructive manner or if its operation may cause permanent damage to the bottom or adjacent shellfish populations.

**Sec. 92.** RCW 75.24.110 and 1983 1st ex.s. c 46 s 87 are each amended to read as follows:

~~((It is unlawful for))~~ The department may not authorize a person to import oysters or oyster seed into this state for the purpose of planting them in state waters without a permit from the director. The director shall issue a permit only after an adequate inspection has been made and the oysters or oyster seed are found to be free of disease, pests, and other substances which might endanger oysters in state waters.

**Sec. 93.** RCW 75.28.010 and 1997 c 58 s 883 are each amended to read as follows:

(1) Except as otherwise provided by this title, ~~((it is unlawful to))~~ a person may not engage in any of the following activities without a license or permit issued by the director:

- (a) Commercially fish for or take food fish or shellfish;
- (b) Deliver food fish or shellfish taken in offshore waters;
- (c) Operate a charter boat or commercial fishing vessel engaged in a fishery;
- (d) Engage in processing or wholesaling food fish or shellfish; or
- (e) Act as a guide for salmon for personal use in freshwater rivers and streams, other than that part of the Columbia river below the bridge at Longview.

(2) No person may engage in the activities described in subsection (1) of this section unless the licenses or permits required by this title are in the person's possession, and the person is the named license holder or an alternate operator designated on the license and the person's license is not suspended.

(3) A valid Oregon license that is equivalent to a license under this title is valid in the concurrent waters of the Columbia river if the state of Oregon recognizes as valid the equivalent Washington license. The director may identify by rule what Oregon licenses are equivalent.

(4) No license or permit is required for the production or harvesting of private sector cultured aquatic products as defined in RCW 15.85.020 or for the delivery, processing, or wholesaling of such aquatic products. However, if a means of identifying such products is required by rules adopted under RCW 15.85.060, the

exemption from licensing or permit requirements established by this subsection applies only if the aquatic products are identified in conformance with those rules.

**Sec. 94.** RCW 75.28.045 and 1993 c 340 s 7 are each amended to read as follows:

This section applies to all commercial fishery licenses, delivery licenses, and charter licenses.

(1) An applicant for a license subject to this section may designate a vessel to be used with the license. Except for emergency salmon delivery licenses, the director may issue a license regardless of whether the applicant designates a vessel. An applicant may designate no more than one vessel on a license subject to this section.

(2) A license for a fishery that requires a vessel authorizes no taking or delivery of food fish or shellfish unless a vessel is designated on the license. A delivery license authorizes no delivery of food fish or shellfish unless a vessel is designated on the license.

~~(3) ((It is unlawful to take food fish or shellfish in a fishery that requires a vessel except from a vessel designated on a commercial fishery license for that fishery:~~

~~—(4) It is unlawful to operate a vessel as a charter boat unless the vessel is designated on a charter license.~~

~~—(5))~~ No vessel may be designated on more than one commercial fishery license unless the licenses are for different fisheries. No vessel may be designated on more than one delivery license, on more than one salmon charter license, or on more than one nonsalmon charter license.

**Sec. 95.** RCW 75.28.095 and 1997 c 76 s 2 are each amended to read as follows:

(1) The director shall issue the charter licenses and angler permits listed in this section according to the requirements of this title. The licenses and permits and their annual fees and surcharges are:

| License or Permit<br>(RCW 75.50.100 Surcharge) | Annual Fee            |                       | Governing<br>Section |
|--|-----------------------|-----------------------|----------------------|
|  | Resident              | Nonresident           |                      |
| (a) Nonsalmon charter                          | \$225                 | \$375                 |                      |
| (b) Salmon charter                             | \$380<br>(plus \$100) | \$685<br>(plus \$100) | RCW 75.30.065        |
| (c) Salmon angler                              | \$ 0                  | \$ 0                  | RCW 75.30.070        |
| (d) Salmon roe                                 | \$ 95                 | \$ 95                 | RCW 75.28.690        |

~~(2) ((Except as provided in subsection (5) of this section, it is unlawful to operate a vessel as a charter boat from which salmon or salmon and other food fish or shellfish are taken without a salmon charter license designating the vessel))~~  
A salmon charter license designating a vessel is required to operate a charter boat

to take salmon, other food fish, and shellfish. The director may issue a salmon charter license only to a person who meets the qualifications of RCW 75.30.065.

(3) ~~((Except as provided in subsections (2) and (5) of this section, it is unlawful to operate a vessel as a charter boat from which food fish or shellfish are taken without a nonsalmon charter license))~~ A nonsalmon charter license designating a vessel is required to operate a charter boat to take food fish other than salmon and shellfish. As used in this subsection, "food fish" does not include salmon.

(4) "Charter boat" means a vessel from which persons may, for a fee, fish for food fish or shellfish for personal use, and that brings food fish or shellfish into state ports or brings food fish or shellfish taken from state waters into United States ports. The director may specify by rule when a vessel is a "charter boat" within this definition. "Charter boat" does not mean a vessel used by a guide for clients fishing for food fish for personal use in freshwater rivers, streams, and lakes, other than Lake Washington or that part of the Columbia River below the bridge at Longview.

(5) A charter boat licensed in Oregon may fish without a Washington charter license under the same rules as Washington charter boat operators in ocean waters within the jurisdiction of Washington state from the southern border of the state of Washington to Leadbetter Point, as long as the Oregon vessel does not land at any Washington port with the purpose of taking on or discharging passengers. The provisions of this subsection shall be in effect as long as the state of Oregon has reciprocal laws and regulations.

(6) A salmon charter license under subsection (1)(b) of this section may be renewed if the license holder notifies the department by May 1st of that year that he or she will not participate in the fishery during that calendar year. The license holder must pay the one hundred-dollar enhancement surcharge, plus a fifteen-dollar handling charge, in order to be considered a valid renewal and eligible to renew the license the following year.

Sec. 96. RCW 75.28.113 and 1994 c 260 s 22 are each amended to read as follows:

(1) ~~((It is unlawful to deliver salmon taken in offshore waters to a place or port in the state without))~~ A salmon delivery license ((from the director)) is required to deliver salmon taken in offshore waters to a place or port in the state. The annual fee for a salmon delivery license is three hundred eighty dollars for residents and six hundred eighty-five dollars for nonresidents. The annual surcharge under RCW 75.50.100 is one hundred dollars for each license. Holders of nonlimited entry delivery licenses issued under RCW 75.28.125 may apply the nonlimited entry delivery license fee against the salmon delivery license fee.

(2) Only a person who meets the qualifications established in RCW 75.30.120 may hold a salmon delivery license issued under this section.

(3) A salmon delivery license authorizes no taking of salmon or other food fish or shellfish from the waters of the state.

(4) If the director determines that the operation of a vessel under a salmon delivery license results in the depletion or destruction of the state's salmon resource or the delivery into this state of salmon products prohibited by law, the director may revoke the license under the procedures of chapter 34.05 RCW.

**Sec. 97.** RCW 75.28.125 and 1994 c 260 s 21 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, ~~((it is unlawful to deliver with))~~ a person may not use a commercial fishing vessel to deliver food fish or shellfish taken in offshore waters to a port in the state without a nonlimited entry delivery license. As used in this section, "food fish" does not include salmon. As used in this section, "shellfish" does not include ocean pink shrimp or coastal crab. The annual license fee for a nonlimited entry delivery license is one hundred ten dollars for residents and two hundred dollars for nonresidents.

(2) Holders of salmon troll fishery licenses issued under RCW 75.28.110, salmon delivery licenses issued under RCW 75.28.113, crab pot fishery licenses issued under RCW 75.28.130, food fish trawl—Non-Puget Sound fishery licenses issued under RCW 75.28.120, Dungeness crab—coastal fishery licenses, ocean pink shrimp delivery licenses, and shrimp trawl—Non-Puget Sound fishery licenses issued under RCW 75.28.130 may deliver food fish or shellfish taken in offshore waters without a nonlimited entry delivery license.

(3) A nonlimited entry delivery license authorizes no taking of food fish or shellfish from state waters.

**Sec. 98.** RCW 75.28.710 and 1993 c 340 s 26 are each amended to read as follows:

(1) ~~((it is unlawful to))~~ A person shall not offer or perform the services of a professional salmon guide in the taking of salmon for personal use in freshwater rivers and streams, other than in that part of the Columbia river below the bridge at Longview, without a professional salmon guide license.

(2) Only an individual at least sixteen years of age may hold a professional salmon guide license. No individual may hold more than one professional salmon guide license.

**Sec. 99.** RCW 75.28.740 and 1993 c 340 s 18 are each amended to read as follows:

(1) The director may by rule designate a fishery as an emerging commercial fishery. The director shall include in the designation whether the fishery is one that requires a vessel.

(2) "Emerging commercial fishery" means the commercial taking of a newly classified species of food fish or shellfish, the commercial taking of a classified species with gear not previously used for that species, or the commercial taking of a classified species in an area from which that species has not previously been commercially taken. Any species of food fish or shellfish commercially harvested in Washington state as of June 7, 1990, may be designated as a species in an emerging commercial fishery, except that no fishery subject to a license limitation

program in chapter 75.30 RCW may be designated as an emerging commercial fishery.

(3) ~~((It is unlawful to))~~ A person shall not take food fish or shellfish in a fishery designated as an emerging commercial fishery without an emerging commercial fishery license and a permit from the director. The director shall issue two types of permits to accompany emerging commercial fishery licenses: Trial fishery permits and experimental fishery permits. Trial fishery permits are governed by subsection (4) of this section. Experimental fishery permits are governed by RCW 75.30.220.

(4) The director shall issue trial fishery permits for a fishery designated as an emerging commercial fishery unless the director determines there is a need to limit the number of participants under RCW 75.30.220. A person who meets the qualifications of RCW 75.28.020 may hold a trial fishery permit. The holder of a trial fishery permit shall comply with the terms of the permit. Trial fishery permits are not transferable from the permit holder to any other person.

**Sec. 100.** RCW 75.30.070 and 1993 c 340 s 29 are each amended to read as follows:

(1) Except as provided in subsection (3) of this section, ~~((it is unlawful to))~~ a person shall not operate a vessel as a charter boat from which salmon are taken in salt water without an angler permit. The angler permit shall specify the maximum number of persons that may fish from the charter boat per trip. The angler permit expires if the salmon charter license is not renewed.

(2) Only a person who holds a salmon charter license issued under RCW 75.28.095 and 75.30.065 may hold an angler permit.

(3) An angler permit shall not be required for charter boats licensed in Oregon and fishing in ocean waters within the jurisdiction of Washington state from the southern border of the state of Washington to Leadbetter Point under the same regulations as Washington charter boat operators, as long as the Oregon vessel does not land at any Washington port with the purpose of taking on or discharging passengers. The provisions of this subsection shall be in effect as long as the state of Oregon has reciprocal laws and regulations.

**Sec. 101.** RCW 75.30.130 and 1997 c 233 s 1 and 1997 c 115 s 1 are each reenacted and amended to read as follows:

(1) ~~((It is unlawful to))~~ A person shall not commercially take Dungeness crab (Cancer magister) in Puget Sound without first obtaining a Dungeness crab—Puget Sound fishery license. As used in this section, "Puget Sound" has the meaning given in RCW 75.28.110(5)(a). A Dungeness crab—Puget Sound fishery license is not required to take other species of crab, including red rock crab (Cancer productus).

(2) Except as provided in subsections (3) and (6) of this section, after January 1, 1982, the director shall issue no new Dungeness crab—Puget Sound fishery licenses. Only a person who meets the following qualification may renew an existing license: The person shall have held the Dungeness crab—Puget Sound



fishery license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and shall not have subsequently transferred the license to another person.

(3) Where the person failed to obtain the license during the previous year because of a license suspension, the person may qualify for a license by establishing that the person held such a license during the last year in which the license was not suspended.

(4) This section does not restrict the issuance of commercial crab licenses for areas other than Puget Sound or for species other than Dungeness crab.

(5) Dungeness crab—Puget Sound fishery licenses are transferable from one license holder to another.

(6) If fewer than one hundred twenty-five persons are eligible for Dungeness crab—Puget Sound fishery licenses, the director may accept applications for new licenses. The director shall determine by random selection the successful applicants for the additional licenses. The number of additional licenses issued shall be sufficient to maintain one hundred twenty-five licenses in the Puget Sound Dungeness crab fishery. The director shall adopt rules governing the application, selection, and issuance procedures for new Dungeness crab—Puget Sound fishery licenses, based upon recommendations of a board of review established under RCW 75.30.050.

**Sec. 102.** RCW 75.30.140 and 1993 c 340 s 35 are each amended to read as follows:

(1) (~~It is unlawful to~~) A person shall not fish commercially for herring in state waters without a herring fishery license. As used in this section, "herring fishery license" means any of the following commercial fishery licenses issued under RCW 75.28.120: Herring dip bag net; herring drag seine; herring gill net; herring lampara; herring purse seine.

(2) Except as provided in this section, a herring fishery license may be issued only to a person who(~~:~~

—(a) ~~Established initial eligibility for a herring fishery license as provided in subsection (3) of this section or acquired such a license by transfer;~~

—(b) ~~Held a herring fishery license during the previous year or acquired such a license by transfer; and~~

—(c) ~~Has not subsequently transferred the license to another person.~~

—(3) ~~A person may establish initial eligibility for a herring fishery license by:~~

—(a) ~~Documenting to the department that the person landed herring during the period January 1, 1971, through April 15, 1973;~~

—(b) ~~Documenting to the department that the person landed herring during the period January 1, 1969, through December 31, 1970, if the person was in the armed forces of the United States during the period January 1, 1971, through April 15, 1973; or~~

—(c) ~~Applying to the department and qualifying for a herring fishery license under hardship criteria established by rule of the director.~~

—~~Landings may be documented only by a department fish receiving ticket.~~

~~— (4) A herring fishery license may be issued only for the type of fishing gear used to establish initial eligibility for the license.~~

~~— (5) The director may establish rules governing the administration of this section based upon recommendations of a board of review established under RCW 75.30.050.~~

~~— (6) Except as provided in subsection (8) of this section, after January 1, 1995, the director shall issue no new herring fishery licenses. After January 1, 1995, a person may renew an existing license only if the person)) held the license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and if the person has not subsequently transferred the license to another person.~~

((7)) (3) Herring fishery licenses may be renewed each year. A herring fishery license that is not renewed each year shall not be renewed further.

((8)) (4) The department may issue additional herring fishery licenses if the stocks of herring will not be jeopardized by granting additional licenses.

((9)) (5) Subject to the restrictions of ((section 11 of this act)) RCW 75.28.011, herring fishery licenses are transferable from one license holder to another.

Sec. 103. RCW 75.30.160 and 1993 c 340 s 38 are each amended to read as follows:

~~((It is unlawful to))~~ A person shall not commercially take whiting from areas that the department designates within the waters described in RCW 75.28.110(5)(a) without a whiting—Puget Sound fishery license.

Sec. 104. RCW 75.30.210 and 1993 c 340 s 41 are each amended to read as follows:

(1) ~~((It is unlawful to))~~ A person shall not commercially take any species of sea urchin using shellfish diver gear without first obtaining a sea urchin dive fishery license.

(2) Except as provided in subsections (3) and (6) of this section, after December 31, 1991, the director shall issue no new sea urchin dive fishery licenses. Only a person who meets the following qualifications may renew an existing license:

(a) The person shall have held the sea urchin dive fishery license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year; and

(b) The person shall document, by valid shellfish receiving tickets issued by the department, that twenty thousand pounds of sea urchins were caught and sold under the license sought to be renewed during the two-year period ending March 31 of the most recent odd-numbered year.

(3) Where the person failed to obtain the license during the previous year because of a license suspension or revocation by the department or the court, the person may qualify for a license by establishing that the person held such a license during the last year in which the person was eligible.

(4) The director may reduce or waive the poundage requirement of subsection (2)(b) of this section upon the recommendation of a board of review established under RCW 75.30.050. The board of review may recommend a reduction or waiver of the poundage requirement in individual cases if, in the board's judgment, extenuating circumstances prevent achievement of the poundage requirement. The director shall adopt rules governing the operation of the board of review and defining "extenuating circumstances."

(5) Sea urchin dive fishery licenses are not transferable from one license holder to another, except from parent to child, or from spouse to spouse during marriage or as a result of marriage dissolution, or upon the death of the license holder.

(6) If fewer than forty-five persons are eligible for sea urchin dive fishery licenses, the director may accept applications for new licenses. The director shall determine by random selection the successful applicants for the additional licenses. The number of additional licenses issued shall be sufficient to maintain up to forty-five licenses in the sea urchin dive fishery. The director shall adopt rules governing the application, selection, and issuance procedure for new sea urchin dive fishery licenses, based upon recommendations of a board of review established under RCW 75.30.050.

**Sec. 105.** RCW 75.30.250 and 1993 c 340 s 44 are each amended to read as follows:

(1) ~~((It is unlawful to))~~ A person shall not commercially take while using shellfish diver gear any species of sea cucumber without first obtaining a sea cucumber dive fishery license.

(2) Except as provided in subsection (6) of this section, after December 31, 1991, the director shall issue no new sea cucumber dive fishery licenses. Only a person who meets the following qualifications may renew an existing license:

(a) The person shall have held the sea cucumber dive fishery license sought to be renewed during the previous two years or acquired the license by transfer from someone who held it during the previous year; and

(b) The person shall establish, by means of dated shellfish receiving documents issued by the department, that thirty landings of sea cucumbers totaling at least ten thousand pounds were made under the license during the previous two-year period ending December 31 of the odd-numbered year.

(3) Where the person failed to obtain the license during either of the previous two years because of a license suspension by the department or the court, the person may qualify for a license by establishing that the person held such a license during the last year in which the person was eligible.

(4) The director may reduce or waive any landing or poundage requirement established under this section upon the recommendation of a board of review established under RCW 75.30.050. The board of review may recommend a reduction or waiver of any landing or poundage requirement in individual cases if, in the board's judgment, extenuating circumstances prevent achievement of the

landing or poundage requirement. The director shall adopt rules governing the operation of the board of review and defining "extenuating circumstances."

(5) Sea cucumber dive fishery licenses are not transferable from one license holder to another except from parent to child, from spouse to spouse during marriage or as a result of marriage dissolution, or upon death of the license holder.

(6) If fewer than fifty persons are eligible for sea cucumber dive fishery licenses, the director may accept applications for new licenses from those persons who can demonstrate two years' experience in the Washington state sea cucumber dive fishery. The director shall determine by random selection the successful applicants for the additional licenses. The number of additional licenses issued shall be sufficient to maintain up to fifty licenses in the sea cucumber dive fishery. The director shall adopt rules governing the application, selection, and issuance procedure for new sea cucumber dive fishery licenses, based upon recommendations of a board of review established under RCW 75.30.050.

**Sec. 106.** RCW 75.30.280 and 1993 c 340 s 46 are each amended to read as follows:

(1) ~~((It is unlawful to))~~ A person shall not harvest geoduck clams commercially without a geoduck fishery license. This section does not apply to the harvest of private sector cultured aquatic products as defined in RCW 15.85.020.

(2) Only a person who has entered into a geoduck harvesting agreement with the department of natural resources under RCW 79.96.080 may hold a geoduck fishery license.

(3) A geoduck fishery license authorizes no taking of geoducks outside the boundaries of the public lands designated in the underlying harvesting agreement, or beyond the harvest ceiling set in the underlying harvesting agreement.

(4) A geoduck fishery license expires when the underlying geoduck harvesting agreement terminates.

(5) The director shall determine the number of geoduck fishery licenses that may be issued for each geoduck harvesting agreement, the number of units of gear whose use the license authorizes, and the type of gear that may be used, subject to RCW 75.24.100. In making those determinations, the director shall seek to conserve the geoduck resource and prevent damage to its habitat.

(6) The holder of a geoduck fishery license and the holder's agents and representatives shall comply with all applicable commercial diving safety regulations adopted by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists on May 8, 1979, 84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq. A violation of those regulations is a violation of this subsection. For the purposes of this section, persons who dive for geoducks are "employees" as defined by the federal occupational safety and health act. A violation of this subsection is grounds for suspension or revocation of a geoduck fishery license following a hearing under the procedures of chapter 34.05 RCW. The department shall not suspend or revoke a geoduck fishery license if the violation has been corrected

within ten days of the date the license holder receives written notice of the violation. If there is a substantial probability that a violation of the commercial diving standards could result in death or serious physical harm to a person engaged in harvesting geoduck clams, the department shall suspend the license immediately until the violation has been corrected. If the license holder is not the operator of the harvest vessel and has contracted with another person for the harvesting of geoducks, the department shall not suspend or revoke the license if the license holder terminates its business relationship with that person until compliance with this subsection is secured.

**Sec. 107.** RCW 75.30.290 and 1993 c 376 s 5 are each amended to read as follows:

~~((After December 31, 1993, it is unlawful to))~~ A person shall not commercially deliver into any Washington state port ocean pink shrimp caught in offshore waters without an ocean pink shrimp delivery license issued under RCW 75.28.730, or an ocean pink shrimp single delivery license issued under RCW 75.30.320. An ocean pink shrimp delivery license shall be issued to a vessel that:

(1) Landed a total of at least five thousand pounds of ocean pink shrimp in Washington in any single calendar year between January 1, 1983, and December 31, 1992, as documented by a valid shellfish receiving ticket; and

(2) Can show continuous participation in the Washington, Oregon, or California ocean pink shrimp fishery by being eligible to land ocean pink shrimp in either Washington, Oregon, or California each year since the landing made under subsection (1) of this section. Evidence of such eligibility shall be a certified statement from the relevant state licensing agency that the applicant for a Washington ocean pink shrimp delivery license held at least one of the following permits:

(a) For Washington: Possession of a delivery permit or delivery license issued under RCW 75.28.125 or a trawl license (other than Puget Sound) issued under RCW 75.28.140;

(b) For Oregon: Possession of a vessel permit issued under Oregon Revised Statute 508.880; or

(c) For California: A trawl permit issued under California Fish and Game Code sec. 8842.

**Sec. 108.** RCW 75.30.350 and 1995 c 252 s 1 are each amended to read as follows:

(1) ~~((Effective January 1, 1995, it is unlawful to))~~ A person shall not commercially fish for coastal crab in Washington state waters without a Dungeness crab—coastal or a Dungeness crab—coastal class B fishery license. Gear used must consist of one buoy attached to each crab pot. Each crab pot must be fished individually.

(2) A Dungeness crab—coastal fishery license is transferable. Except as provided in subsection (3) of this section, such a license shall only be issued to a

person who proved active historical participation in the coastal crab fishery by having designated, after December 31, 1993, a vessel or a replacement vessel on the qualifying license that singly or in combination meets the following criteria:

(a) Made a minimum of eight coastal crab landings totaling a minimum of five thousand pounds per season in at least two of the four qualifying seasons identified in subsection (5) of this section, as documented by valid Washington state shellfish receiving tickets; and showed historical and continuous participation in the coastal crab fishery by having held one of the following licenses or their equivalents each calendar year beginning 1990 through 1993, and was designated on the qualifying license of the person who held one of the following licenses in 1994:

- (i) Crab pot—Non-Puget Sound license, issued under RCW 75.28.130(1)(b);
- (ii) Nonsalmon delivery license, issued under RCW 75.28.125;
- (iii) Salmon troll license, issued under RCW 75.28.110;
- (iv) Salmon delivery license, issued under RCW 75.28.113;
- (v) Food fish trawl license, issued under RCW 75.28.120; or
- (vi) Shrimp trawl license, issued under RCW 75.28.130; or

(b) Made a minimum of four Washington landings of coastal crab totaling two thousand pounds during the period from December 1, 1991, to March 20, 1992, and made a minimum of eight crab landings totaling a minimum of five thousand pounds of coastal crab during each of the following periods: December 1, 1991, to September 15, 1992; December 1, 1992, to September 15, 1993; and December 1, 1993, to September 15, 1994. For landings made after December 31, 1993, the vessel shall have been designated on the qualifying license of the person making the landings; or

(c) Made any number of coastal crab landings totaling a minimum of twenty thousand pounds per season in at least two of the four qualifying seasons identified in subsection (5) of this section, as documented by valid Washington state shellfish receiving tickets, showed historical and continuous participation in the coastal crab fishery by having held one of the qualifying licenses each calendar year beginning 1990 through 1993, and the vessel was designated on the qualifying license of the person who held that license in 1994.

(3) A Dungeness crab-coastal fishery license shall be issued to a person who had a new vessel under construction between December 1, 1988, and September 15, 1992, if the vessel made coastal crab landings totaling a minimum of five thousand pounds by September 15, 1993, and the new vessel was designated on the qualifying license of the person who held that license in 1994. All landings shall be documented by valid Washington state shellfish receiving tickets. License applications under this subsection may be subject to review by the advisory review board in accordance with RCW 75.30.050. For purposes of this subsection, "under construction" means either:

(a)(i) A contract for any part of the work was signed before September 15, 1992; and

(ii) The contract for the vessel under construction was not transferred or otherwise alienated from the contract holder between the date of the contract and the issuance of the Dungeness crab-coastal fishery license; and

(iii) Construction had not been completed before December 1, 1988; or

(b)(i) The keel was laid before September 15, 1992; and

(ii) Vessel ownership was not transferred or otherwise alienated from the owner between the time the keel was laid and the issuance of the Dungeness crab-coastal fishery license; and

(iii) Construction had not been completed before December 1, 1988.

(4) A Dungeness crab-coastal class B fishery license is not transferable. Such a license shall be issued to persons who do not meet the qualification criteria for a Dungeness crab-coastal fishery license, if the person has designated on a qualifying license after December 31, 1993, a vessel or replacement vessel that, singly or in combination, made a minimum of four landings totaling a minimum of two thousand pounds of coastal crab, documented by valid Washington state shellfish receiving tickets, during at least one of the four qualifying seasons, and if the person has participated continuously in the coastal crab fishery by having held or by having owned a vessel that held one or more of the licenses listed in subsection (2) of this section in each calendar year subsequent to the qualifying season in which qualifying landings were made through 1994. Dungeness crab-coastal class B fishery licenses cease to exist after December 31, 1999, and the continuing license provisions of RCW 34.05.422(3) are not applicable.

(5) The four qualifying seasons for purposes of this section are:

(a) December 1, 1988, through September 15, 1989;

(b) December 1, 1989, through September 15, 1990;

(c) December 1, 1990, through September 15, 1991; and

(d) December 1, 1991, through September 15, 1992.

(6) For purposes of this section and RCW 75.30.420, "coastal crab" means Dungeness crab (cancer magister) taken in all Washington territorial and offshore waters south of the United States-Canada boundary and west of the Bonilla-Tatoosh line (a line from the western end of Cape Flattery to Tatoosh Island lighthouse, then to the buoy adjacent to Duntz Rock, then in a straight line to Bonilla Point of Vancouver island), Grays Harbor, Willapa Bay, and the Columbia river.

(7) For purposes of this section, "replacement vessel" means a vessel used in the coastal crab fishery in 1994, and that replaces a vessel used in the coastal crab fishery during any period from 1988 through 1993, and which vessel's licensing and catch history, together with the licensing and catch history of the vessel it replaces, qualifies a single applicant for a Dungeness crab-coastal or Dungeness crab-coastal class B fishery license. A Dungeness crab-coastal or Dungeness crab-coastal class B fishery license may only be issued to a person who designated a vessel in the 1994 coastal crab fishery and who designated the same vessel in 1995.

**Sec. 109.** RCW 75.30.450 and 1994 c 260 s 16 are each amended to read as follows:

(1) ~~((It is unlawful for))~~ A Dungeness crab—coastal fishery ~~((licensee to))~~ licensee shall not take Dungeness crab in the waters of the exclusive economic zone westward of the states of Oregon or California and land crab taken in those waters into Washington state unless the licensee also holds the licenses, permits, or endorsements, required by Oregon or California to land crab into Oregon or California, respectively.

(2) This section becomes effective only upon reciprocal legislation being enacted by both the states of Oregon and California. For purposes of this section, "exclusive economic zone" means that zone defined in the federal fishery conservation and management act (16 U.S.C. Sec. 1802) as of January 1, 1995, or as of a subsequent date adopted by rule of the director.

**Sec. 110.** RCW 75.58.010 and 1993 sp.s. c 2 s 55 are each amended to read as follows:

(1) The director of agriculture and the director shall jointly develop a program of disease inspection and control for aquatic farmers as defined in RCW 15.85.020. The program shall be administered by the department under rules established under this section. The purpose of the program is to protect the aquaculture industry and wildstock fisheries from a loss of productivity due to aquatic diseases or maladies. As used in this section "diseases" means, in addition to its ordinary meaning, infestations of parasites or pests. The disease program may include, but is not limited to, the following elements:

- (a) Disease diagnosis;
- (b) Import and transfer requirements;
- (c) Provision for certification of stocks;
- (d) Classification of diseases by severity;
- (e) Provision for treatment of selected high-risk diseases;
- (f) Provision for containment and eradication of high-risk diseases;
- (g) Provision for destruction of diseased cultured aquatic products;
- (h) Provision for quarantine of diseased cultured aquatic products;
- (i) Provision for coordination with state and federal agencies;
- (j) Provision for development of preventative or control measures;
- (k) Provision for cooperative consultation service to aquatic farmers; and
- (l) Provision for disease history records.

(2) The ~~((director))~~ commission shall adopt rules implementing this section. However, such rules shall have the prior approval of the director of agriculture and shall provide therein that the director of agriculture has provided such approval. The director of agriculture or the director's designee shall attend the rule-making hearings conducted under chapter 34.05 RCW and shall assist in conducting those hearings. The authorities granted the department by these rules and by RCW 75.08.080(1)(g), 75.24.080, 75.24.110, 75.28.125, 75.58.020, 75.58.030, and 75.58.040 constitute the only authorities of the department to regulate private sector cultured aquatic products and aquatic farmers as defined



in RCW 15.85.020. Except as provided in subsection (3) of this section, no action may be taken against any person to enforce these rules unless the department has first provided the person an opportunity for a hearing. In such a case, if the hearing is requested, no enforcement action may be taken before the conclusion of that hearing.

(3) The rules adopted under this section shall specify the emergency enforcement actions that may be taken by the department, and the circumstances under which they may be taken, without first providing the affected party with an opportunity for a hearing. Neither the provisions of this subsection nor the provisions of subsection (2) of this section shall preclude the department from requesting the initiation of criminal proceedings for violations of the disease inspection and control rules.

(4) ~~((It is unlawful for any person to))~~ A person shall not violate the rules adopted under subsection (2) or (3) of this section or ~~((to))~~ violate RCW 75.58.040.

(5) In administering the program established under this section, the department shall use the services of a pathologist licensed to practice veterinary medicine.

(6) The director in administering the program shall not place constraints on or take enforcement actions in respect to the aquaculture industry that are more rigorous than those placed on the department or other fish-rearing entities.

**Sec. 111.** RCW 77.08.010 and 1996 c 207 s 2 are each amended to read as follows:

As used in this title or Title 75 RCW or rules adopted pursuant to ~~((this))~~ those titles, unless the context clearly requires otherwise:

(1) "Director" means the director of fish and wildlife.

(2) "Department" means the department of fish and wildlife.

(3) "Commission" means the state fish and wildlife commission.

(4) "Person" means and includes an individual, a corporation, or a group of two or more individuals acting with a common purpose whether acting in an individual, representative, or official capacity.

(5) "Fish and wildlife ~~((agent))~~ officer" means a person appointed and commissioned by the director, with authority to enforce laws and rules adopted pursuant to this title, and other statutes as prescribed by the legislature. Fish and wildlife officer includes a person commissioned before the effective date of this section as a wildlife agent.

(6) "Ex officio fish and wildlife ~~((agent))~~ officer" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio fish and wildlife ~~((agent))~~ officer" includes ~~((fisheries patrol officers,))~~ special agents of the national marine fisheries service, state parks commissioned officers, United States fish and wildlife special agents, department of natural resources enforcement officers, and United States

forest service officers, while the agents and officers are within their respective jurisdictions.

(7) "To hunt" and its derivatives means an effort to kill, injure, capture, or harass a wild animal or wild bird.

(8) "To trap" and its derivatives means a method of hunting using devices to capture wild animals or wild birds.

(9) "To fish" and its derivatives means an effort to kill, injure, harass, or catch a ((game)) fish.

(10) "Open season" means those times, manners of taking, and places or waters established by rule of the commission for the lawful hunting, fishing, or possession of game animals, game birds, or game fish that conform to the special restrictions or physical descriptions established by rule of the commission or that have otherwise been deemed legal to hunt, fish, or possess by rule of the commission. "Open season" includes the first and last days of the established time.

(11) "Closed season" means all times, manners of taking, and places or waters other than those established by rule of the commission as an open season. "Closed season" also means all hunting, fishing, or possession of game animals, game birds, or game fish that do not conform to the special restrictions or physical descriptions established by rule of the commission as an open season or that have not otherwise been deemed legal to hunt, fish, or possess by rule of the commission as an open season.

(12) "Closed area" means a place where the hunting of some species of wild animals or wild birds is prohibited.

(13) "Closed waters" means all or part of a lake, river, stream, or other body of water, where fishing for game fish is prohibited.

(14) "Game reserve" means a closed area where hunting for all wild animals and wild birds is prohibited.

(15) "Bag limit" means the maximum number of game animals, game birds, or game fish which may be taken, caught, killed, or possessed by a person, as specified by rule of the commission for a particular period of time, or as to size, sex, or species.

(16) "Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. This includes but is not limited to mammals, birds, reptiles, amphibians, fish, and invertebrates. The term "wildlife" does not include feral domestic mammals, the family Muridae of the order Rodentia (old world rats and mice), or those fish, shellfish, and marine invertebrates classified as food fish or shellfish by the director. The term "wildlife" includes all stages of development and the bodily parts of wildlife members.

(17) "Wild animals" means those species of the class Mammalia whose members exist in Washington in a wild state and the species *Rana catesbeiana* (bullfrog). The term "wild animal" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

(18) "Wild birds" means those species of the class Aves whose members exist in Washington in a wild state.

(19) "Protected wildlife" means wildlife designated by the commission that shall not be hunted or fished.

(20) "Endangered species" means wildlife designated by the commission as seriously threatened with extinction.

(21) "Game animals" means wild animals that shall not be hunted except as authorized by the commission.

(22) "Fur-bearing animals" means game animals that shall not be trapped except as authorized by the commission.

(23) "Game birds" means wild birds that shall not be hunted except as authorized by the commission.

(24) "Predatory birds" means wild birds that may be hunted throughout the year as authorized by the commission.

(25) "Deleterious exotic wildlife" means species of the animal kingdom not native to Washington and designated as dangerous to the environment or wildlife of the state.

(26) "Game farm" means property on which wildlife is held or raised for commercial purposes, trade, or gift. The term "game farm" does not include publicly owned facilities.

(27) "Person of disability" means a permanently disabled person who is not ambulatory without the assistance of a wheelchair, crutches, or similar devices.

(28) "Fish" includes all species classified as game fish or food fish by statute or rule, as well as all fin fish not currently classified as food fish or game fish if such species exist in state waters. The term "fish" includes all stages of development and the bodily parts of fish species.

**Sec. 112.** RCW 77.12.055 and 1993 sp.s. c 2 s 67 are each amended to read as follows:

(1) ~~((Jurisdiction and authority granted under RCW 77.12.060, 77.12.070, and 77.12.080 to the director, wildlife agents;))~~ Fish and wildlife officers and ex officio ~~((wildlife agents is limited to the laws and rules adopted pursuant to this title pertaining to wildlife or to the management, operation, maintenance, or use of or conduct on real property used, owned, leased, or controlled by the department))~~ fish and wildlife officers shall enforce this title, Title 75 RCW, rules of the department, and other statutes as prescribed by the legislature. However, when acting within the scope of these duties and when an offense occurs in the presence of the ~~((wildlife agent))~~ fish and wildlife officer who is not an ex officio ~~((wildlife agent, the wildlife agent))~~ fish and wildlife officer, the fish and wildlife officer may enforce all criminal laws of the state. The ~~((wildlife agent))~~ fish and wildlife officer must have successfully completed the basic law enforcement academy course sponsored by the criminal justice training commission, or a ~~((supplemental))~~ course ~~((in criminal law enforcement as))~~ approved by the department and the criminal justice training commission and provided by the

department or the criminal justice training commission, prior to enforcing the criminal laws of the state.

(2) ~~((Wildlife agents))~~ Fish and wildlife officers are peace officers.

(3) Any liability or claim of liability ~~((which))~~ under chapter 4.92 RCW that arises out of the exercise or alleged exercise of authority by a ~~((wildlife agent))~~ fish and wildlife officer rests with the department unless the ~~((wildlife agent))~~ fish and wildlife officer acts under the direction and control of another agency or unless the liability is otherwise assumed under ~~((a-written))~~ an agreement between the department and another agency.

(4) ~~((Wildlife agents))~~ Fish and wildlife officers may serve and execute warrants and processes issued by the courts.

(5) Fish and wildlife officers may enforce RCW 79.01.805 and 79.01.810.

(6) To enforce the laws of this title and Title 75 RCW, fish and wildlife officers may call to their aid any ex officio fish and wildlife officer or citizen and that person shall render aid.

NEW SECTION. Sec. 113. Based upon articulable facts that a person is engaged in fishing or hunting activities, fish and wildlife officers have the authority to temporarily stop the person and check for valid licenses, tags, permits, stamps, or catch record cards, and to inspect all fish and wildlife in possession as well as the equipment being used to ensure compliance with the requirements of this title and Title 75 RCW.

Sec. 114. RCW 77.12.080 and 1987 c 506 s 19 are each amended to read as follows:

~~((Wildlife agents))~~ Fish and wildlife officers and ex officio ~~((wildlife agents))~~ fish and wildlife officers may arrest without warrant persons found violating the law or rules adopted pursuant to this title and Title 75 RCW.

Sec. 115. RCW 77.12.090 and 1987 c 506 s 20 are each amended to read as follows:

~~((Wildlife agents,))~~ Fish and wildlife officers and ex officio ~~((wildlife agents))~~ fish and wildlife officers may make a reasonable search without warrant of a vessel, container, or conveyances, vehicles, packages, game baskets, game coats, or other receptacles for fish and wildlife, or tents, camps, or similar places which they have reason to believe contain evidence of a violation of law or rules adopted pursuant to this title or Title 75 RCW and seize evidence as needed for law enforcement. This does not preclude seizure of property if authorized for forfeiture as authorized by law.

Sec. 116. RCW 77.12.095 and 1982 c 152 s 1 are each amended to read as follows:

~~((Wildlife agents))~~ Fish and wildlife officers may inspect without warrant at reasonable times and in a reasonable manner the premises, containers, fishing equipment, fish, and wildlife, and records required by the department of any ~~((commercial enterprise operating under the authority of a license or permit issued by the department or any commercial business that sells, stores, transports, or~~

~~possesses wildlife)) commercial fisher or wholesale dealer or fish buyer. Fish and wildlife officers may similarly inspect without warrant the premises, containers, fishing equipment, fish and wildlife, and records required by the department of any shipping agent or other person placing or attempting to place fish or wildlife into interstate commerce, any cold storage plant that the department has probable cause to believe contains fish or wildlife, or of any taxidermist or fur buyer. Fish and wildlife officers may inspect without warrant the records required by the department of any retail outlet selling fish or wildlife or both, and, if the officers have probable cause to believe a violation of this title or rules of the commission has occurred, they may inspect without warrant the premises, containers, and fish and wildlife of any retail outlet selling fish or wildlife or both.~~

Sec. 117. RCW 77.12.120 and 1980 c 78 s 26 are each amended to read as follows:

~~((Upon complaint showing probable cause for believing that wildlife unlawfully caught, taken, killed, controlled, possessed, or transported, is concealed or kept in a game basket, game coat, package, or other receptacle for wildlife, or at a business place, vehicle, or other place, the))~~ On a showing of probable cause that there has been a violation of any fish or wildlife law of the state of Washington, or upon a showing of probable cause to believe that evidence of such violation may be found at a place, a court shall issue a search warrant ((and have the place searched for wildlife)) or arrest warrant. Fish and wildlife officers may execute any such arrest or search warrant reasonably necessary to their duties under this title or Title 75 RCW and may seize fish and wildlife or any evidence of a crime and the fruits or instrumentalities of a crime as provided by warrant. The court may have a building, enclosure, vehicle, vessel, container, or receptacle opened or entered and the contents examined.

Sec. 118. RCW 77.16.010 and 1987 c 506 s 58 are each amended to read as follows:

~~((It is unlawful to))~~ A person shall not promote, conduct, hold, or sponsor a contest for the hunting or fishing of wildlife or a competitive field trial involving live wildlife for hunting dogs without first obtaining a hunting or fishing contest permit. Contests and field trials shall be held in accordance with established rules.

Sec. 119. RCW 77.16.020 and 1996 c 207 s 3 are each amended to read as follows:

~~((1) It is unlawful to hunt, fish, or possess a game animal, game bird, or game fish during closed season for that game animal, game bird, or game fish except as provided in RCW 77.12.105 or 77.12.265.~~

~~—(2) It is unlawful to kill, take, catch, possess, or control a game animal, game bird, or game fish in excess of the number fixed as the bag limit for that game animal, game bird, or game fish.~~

~~—(3) It is unlawful to hunt within a game reserve or to fish for game fish within closed waters.~~

~~— (4) It is unlawful to hunt wild birds or wild animals within a closed area except as authorized by rule of the commission.~~

~~— (5) It is unlawful to hunt or fish for wildlife, practice taxidermy for profit, deal in raw furs for profit, act as a fishing guide, or operate a game farm, stock game fish, or collect wildlife for research or display, without having in possession the license, permit, tag, stamp, or catch record card required by chapter 77.32 RCW or rule of the department. The activities described in this subsection shall be conducted in accordance with rules adopted pursuant to this title.~~

~~— (6)) For the purposes of ((this section)) establishing a season or bag limit restriction on Canada goose hunting, the department shall not consider leg length or bill length of dusky Canada geese (*Branta canadensis occidentalis*).~~

Sec. 120. RCW 77.16.095 and 1987 c 506 s 63 are each amended to read as follows:

~~((It is unlawful to mutilate))~~ The commission may adopt rules governing the possession of fish and wildlife so that the size, species, or sex ((cannot)) can be determined visually in the field or while being transported. ((The director may prescribe specific criteria for field identification to satisfy this section.))

Sec. 121. RCW 77.16.170 and 1993 sp.s. c 2 s 75 are each amended to read as follows:

~~((It is unlawful to take a wild animal from another person's trap without permission, or to spring, pull up, damage, possess, or destroy the trap; however, it is not unlawful for))~~ A property owner, lessee, or tenant ((to)) may remove a trap placed on the owner's, lessee's, or tenant's posted or fenced property by a trapper.

Trappers shall attach to the chain of their traps or devices a legible metal tag with either the department identification number of the trapper or the name and address of the trapper in English letters not less than one-eighth inch in height.

When ~~((an individual))~~ a property owner, lessee, or tenant presents a trapper identification number to the department for a trap found upon the property of the owner, lessee, or tenant and requests identification of the trapper, the department shall provide the ~~((individual))~~ requestor with the name and address of the trapper. Prior to disclosure of the trapper's name and address, the department shall obtain the name and address of the requesting individual in writing and after disclosing the trapper's name and address to the requesting individual, the requesting individual's name and address shall be disclosed in writing to the trapper whose name and address was disclosed.

Sec. 122. RCW 77.16.220 and 1980 c 78 s 89 are each amended to read as follows:

~~((It is unlawful to))~~ A person shall not divert water from a lake, river, or stream containing game fish unless the water diversion device is equipped at or near its intake with a fish guard or screen to prevent the passage of game fish into the device and, if necessary, with a means of returning game fish from immediately in front of the fish guard or screen to the waters of origin. A person

who is now otherwise lawfully diverting water from a lake, river or stream shall not be deemed guilty of a violation of this section.

Plans for the fish guard, screen, and bypass shall be approved by the director prior to construction. The installation shall be approved by the director prior to the diversion of water.

The director may close a water diversion device operated in violation of this section and keep it closed until it is properly equipped with a fish guard, screen, or bypass.

**\*Sec. 123. RCW 77.32.350 and 1992 c 41 s 1 are each amended to read as follows:**

*In addition to a basic hunting license, a supplemental license, permit, or stamp is required to hunt for quail, partridge, pheasant, or migratory waterfowl, to hunt with a raptor, or to hunt wild animals with a dog.*

*(1) A hound permit is required to hunt wild animals, except rabbits and hares, with a dog. The fee for this permit is twelve dollars.*

*(2) An eastern Washington upland game bird permit is required to hunt for quail, partridge, and pheasant in eastern Washington. The fee for this permit is ten dollars.*

*(3) A western Washington upland game bird permit is required to hunt for quail, partridge, and pheasant in western Washington. The fee for this permit is thirty-five dollars. Western Washington upland game bird permits must contain numbered spaces for recording the location and date of harvest of each western Washington pheasant. ~~((It is unlawful to))~~ A person shall not harvest a western Washington pheasant without immediately recording this information on the permit.*

*(4) Effective January 1, 1993, the permit shall be available as a season option, a juvenile full season option, or a two-day option. The fee for this permit is:*

*(a) For the full season option, thirty-five dollars;*

*(b) For the juvenile full season or the two-day option, twenty dollars.*

*For the purposes of this subsection a juvenile is defined as a person under fifteen years of age upon the opening date of the western Washington pheasant season.*

*(5) Western Washington upland game permits are valid for the following number of pheasants and harvesting pheasants in excess of these numbers requires another permit:*

*(a) A full season permit is valid for no more than ten pheasants;*

*(b) A juvenile full season permit is valid for no more than six pheasants;*

*(c) A two-day permit is valid for no more than four pheasants.*

*(6) A falconry license is required to possess or hunt with a raptor, including seasons established exclusively for hunting in that manner. The fee for this license is thirty-six dollars.*

*(7) A migratory waterfowl stamp affixed to a basic hunting license is required for all persons sixteen years of age or older to hunt migratory waterfowl. The fee for the stamp is six dollars.*

*(8) The migratory waterfowl stamp shall be validated by the signature of the licensee written across the face of the stamp.*

*(9) The migratory waterfowl stamps required by this section expire on March 31st following the date of issuance.*

\*Sec. 123 was vetoed. See message at end of chapter.

**NEW SECTION. Sec. 124. REPEALER.** The following acts or parts of acts are each repealed:

- (1) RCW 75.10.010 and 1996 c 267 s 4;
- (2) RCW 75.10.020 and 1996 c 267 s 5, 1983 1st ex.s. c 46 s 33, & 1955 c 12 s 75.08.170;
- (3) RCW 75.10.030 and 1996 c 267 s 6, 1990 c 144 s 5, 1983 1st ex.s. c 46 s 34, & 1955 c 12 s 75.36.010;
- (4) RCW 75.10.040 and 1996 c 267 s 7, 1983 1st ex.s. c 46 s 35, 1980 c 78 s 134, & 1955 c 12 s 75.08.200;
- (5) RCW 75.10.050 and 1996 c 267 s 8, 1983 1st ex.s. c 46 s 36, & 1955 c 12 s 75.08.280;
- (6) RCW 75.10.060 and 1983 1st ex.s. c 46 s 37 & 1955 c 12 s 75.36.040;
- (7) RCW 75.10.080 and 1983 1st ex.s. c 46 s 39 & 1955 c 12 s 75.36.050;
- (8) RCW 75.10.090 and 1983 1st ex.s. c 46 s 40 & 1955 c 12 s 75.08.180;
- (9) RCW 75.10.110 and 1996 c 267 s 10, 1990 c 144 s 6, 1987 c 380 s 16, 1983 1st ex.s. c 46 s 42, 1979 ex.s. c 99 s 1, & 1955 c 12 s 75.08.260;
- (10) RCW 75.10.120 and 1996 c 267 s 11, 1990 c 144 s 7, 1983 1st ex.s. c 46 s 43, 1979 ex.s. c 99 s 2, 1957 c 171 s 5, & 1955 c 12 s 75.28.380;
- (11) RCW 75.10.130 and 1996 c 267 s 12, 1983 1st ex.s. c 46 s 44, & 1979 ex.s. c 99 s 3;
- (12) RCW 75.10.140 and 1996 c 267 s 13, 1990 c 163 s 7, 1984 c 80 s 4, 1983 1st ex.s. c 46 s 45, & 1979 ex.s. c 141 s 7;
- (13) RCW 75.10.170 and 1996 c 267 s 15 & 1990 c 63 s 5;
- (14) RCW 75.10.180 and 1996 c 267 s 16 & 1990 c 144 s 1;
- (15) RCW 75.10.190 and 1996 c 267 s 17 & 1990 c 144 s 2;
- (16) RCW 75.10.200 and 1996 c 267 s 18, 1993 sp.s. c 2 s 26, & 1990 c 144 s 3;
- (17) RCW 75.10.210 and 1990 c 144 s 4;
- (18) RCW 75.12.020 and 1996 c 267 s 19, 1983 1st ex.s. c 46 s 49, & 1955 c 12 s 75.12.020;
- (19) RCW 75.12.031 and 1983 1st ex.s. c 46 s 51 & 1955 c 12 s 75.20.070;
- (20) RCW 75.12.070 and 1996 c 267 s 20, 1983 1st ex.s. c 46 s 53, & 1955 c 12 s 75.12.070;
- (21) RCW 75.12.090 and 1990 c 144 s 8, 1983 1st ex.s. c 46 s 54, 1982 c 14 s 1, & 1955 c 12 s 75.12.090;



- (22) RCW 75.12.100 and 1996 c 267 s 21, 1983 1st ex.s. c 46 s 55, & 1955 c 12 s 75.12.100;
- (23) RCW 75.12.115 and 1996 c 267 s 22, 1983 1st ex.s. c 46 s 56, & 1971 ex.s. c 106 s 1;
- (24) RCW 75.12.120 and 1985 c 51 s 7, 1983 1st ex.s. c 46 s 57, & 1955 c 12 s 75.12.120;
- (25) RCW 75.12.125 and 1983 1st ex.s. c 46 s 58;
- (26) RCW 75.12.127 and 1993 c 340 s 49;
- (27) RCW 75.12.400 and 1983 1st ex.s. c 46 s 64 & 1982 c 14 s 2;
- (28) RCW 75.12.410 and 1983 1st ex.s. c 46 s 66 & 1955 c 12 s 75.08.130;
- (29) RCW 75.12.420 and 1996 c 267 s 23, 1983 1st ex.s. c 46 s 67, & 1955 c 12 s 75.08.210;
- (30) RCW 75.12.430 and 1983 1st ex.s. c 46 s 68 & 1955 c 12 s 75.08.220;
- (31) RCW 75.24.050 and 1996 c 267 s 25, 1983 1st ex.s. c 46 s 80, & 1955 c 12 s 75.24.050;
- (32) RCW 75.24.090 and 1996 c 267 s 26, 1983 1st ex.s. c 46 s 84, 1955 c 212 s 7, & 1955 c 12 s 75.24.090;
- (33) RCW 75.25.150 and 1994 c 255 s 7, 1993 sp.s. c 17 s 9, 1989 c 305 s 13, 1984 c 80 s 9, & 1983 1st ex.s. c 46 s 99;
- (34) RCW 77.12.060 and 1987 c 506 s 17, 1980 c 78 s 18, 1961 c 68 s 1, & 1955 c 36 s 77.12.060;
- (35) RCW 77.12.070 and 1987 c 506 s 18, 1980 c 78 s 19, 1971 ex.s. c 173 s 1, 1961 c 68 s 2, & 1955 c 36 s 77.12.070;
- (36) RCW 77.16.040 and 1987 c 506 s 60, 1980 c 78 s 72, 1971 ex.s. c 166 s 4, 1961 c 75 s 1, & 1955 c 36 s 77.16.040;
- (37) RCW 77.16.050 and 1980 c 78 s 73 & 1955 c 36 s 77.16.050;
- (38) RCW 77.16.060 and 1993 sp.s. c 2 s 73, 1987 c 506 s 61, 1980 c 78 s 74, & 1955 c 36 s 77.16.060;
- (39) RCW 77.16.080 and 1987 c 506 s 62, 1980 c 78 s 76, & 1955 c 36 s 77.16.080;
- (40) RCW 77.16.090 and 1980 c 78 s 77 & 1955 c 36 s 77.16.090;
- (41) RCW 77.16.100 and 1980 c 78 s 79, 1977 ex.s. c 275 s 1, & 1955 c 36 s 77.16.100;
- (42) RCW 77.16.110 and 1987 c 506 s 64, 1980 c 78 s 80, & 1955 c 36 s 77.16.110;
- (43) RCW 77.16.120 and 1980 c 78 s 81 & 1955 c 36 s 77.16.120;
- (44) RCW 77.16.130 and 1987 c 506 s 65, 1980 c 78 s 82, & 1955 c 36 s 77.16.130;
- (45) RCW 77.16.150 and 1987 c 506 s 66, 1980 c 78 s 83, & 1955 c 36 s 77.16.150;
- (46) RCW 77.16.160 and 1980 c 78 s 84 & 1955 c 36 s 77.16.160;
- (47) RCW 77.16.180 and 1987 c 506 s 67, 1980 c 78 s 86, & 1955 c 36 s 77.16.180;
- (48) RCW 77.16.190 and 1980 c 78 s 87 & 1955 c 36 s 77.16.190;

(49) RCW 77.16.250 and 1989 c 297 s 5, 1980 c 78 s 93, & 1955 c 36 s 77.16.250;

(50) RCW 77.16.260 and 1980 c 78 s 94, 1955 c 85 s 1, & 1955 c 36 s 77.16.260;

(51) RCW 77.16.310 and 1981 c 310 s 4, 1980 c 78 s 125, & 1979 ex.s. c 127 s 1;

(52) RCW 77.16.320 and 1987 c 506 s 68, 1981 c 310 s 5, & 1980 c 44 s 1;

(53) RCW 77.16.330 and 1987 c 506 s 104 & 1985 c 243 s 3;

(54) RCW 77.16.610 and 1982 c 155 s 3;

(55) RCW 77.21.010 and 1988 c 265 s 3;

(56) RCW 77.21.040 and 1989 c 314 s 5, 1987 c 506 s 72, 1980 c 78 s 25, & 1955 c 36 s 77.12.110; and

(57) RCW 77.21.060 and 1989 c 314 s 6, 1987 c 506 s 73, 1980 c 78 s 122, & 1955 c 36 s 77.32.260.

**NEW SECTION. Sec. 125. RECODIFICATION.** The following sections are recodified as new sections in the chapter created in section 128 of this act:

RCW 75.10.100

RCW 75.10.220

RCW 75.12.320

RCW 77.12.120

RCW 77.12.130

RCW 77.16.135

**NEW SECTION. Sec. 126. SHORT TITLE.** This chapter may be known and cited as the fish and wildlife enforcement code.

**NEW SECTION. Sec. 127. CAPTIONS NOT LAW.** Captions used in this chapter are not any part of the law.

**NEW SECTION. Sec. 128.** Sections 1 through 48, 50 through 66, 68, 69, 113, 126, and 127 of this act constitute a new chapter in Title 77 RCW.

**NEW SECTION. Sec. 129.** The enactment of chapter . . ., Laws of 1998 (this act) does not terminate, or in any way modify, any liability, civil or criminal, that was in existence on the effective date of this section.

Passed the Senate March 11, 1998.

Passed the House March 10, 1998.

Approved by the Governor March 27, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 27, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 123, Engrossed Substitute Senate Bill No. 6328 entitled:

"AN ACT Relating to fish and wildlife code enforcement;"

The codes for the former Departments of Fish and Wildlife were not properly dealt with when those departments were merged several years ago. ESSB 6328 consolidates and standardizes the enforcement code for the Department of Fish and Wildlife. This bill is long

overdue, and I commend the Department and the Legislature for their hard work in developing this legislation.

Section 123 of ESSB 6328 amends a part of the statute that is also amended in SSB 6330. The double amendment appears to have been unintended, and would cause confusion.

For this reason, I have vetoed section 123 of Engrossed Substitute Senate Bill No. 6328.

With the exception of section 123, Engrossed Substitute Senate Bill No. 6328 is approved."

## CHAPTER 191

[Second Substitute Senate Bill 6330]

### FISH AND WILDLIFE LICENSES—REVISIONS

AN ACT Relating to fish and wildlife licenses; amending RCW 75.25.092, 75.25.120, 75.25.140, 75.25.190, 77.32.005, 77.32.010, 77.32.014, 77.32.025, 77.32.050, 77.32.070, 77.32.090, 77.32.155, 77.32.235, 77.32.240, 77.32.250, 77.32.320, 77.32.350, 77.32.370, 75.50.100, 75.54.140, 77.44.030, 77.12.810, 77.08.045, 77.12.670, 77.12.690, 77.16.310, 77.21.020, 77.21.030, 77.16.330, 77.12.170, and 77.44.010; reenacting and amending RCW 75.25.080; adding new sections to chapter 77.32 RCW; creating new sections; recodifying RCW 75.25.080, 75.25.120, 75.25.140, and 75.25.190; repealing RCW 75.25.005, 75.25.091, 75.25.095, 75.25.110, 75.25.130, 75.25.150, 75.25.170, 75.25.180, 75.25.200, 77.32.092, 77.32.101, 77.32.161, 77.32.230, 77.32.340, 77.32.352, 77.32.360, 77.32.390, 77.32.060, 75.08.274, and 75.25.012; prescribing penalties; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 75.25.080 and 1993 sp.s. c 17 s 5, 1993 sp.s. c 2 s 42, and 1993 c 201 s 1 are each reenacted and amended to read as follows:

(1) The commission shall authorize the director to issue designated harvester cards to persons of disability. The commission shall adopt rules governing the conduct of persons of disability who fish and harvest shellfish and their designated harvesters.

(2) It is lawful to fish for, take, or possess the personal-use daily bag limit of shellfish, game fish, or food fish for a disabled person if the harvester is licensed and has a designated harvester card, and if the disabled person is ((licensed and)) present on site and in possession of a ((physical disability permit issued by the director)) combination fishing license issued under section 19 of this act.

~~((2) An application for a physical disability permit)~~ (3) A designated harvester card will be issued to such a licensee upon written application to the director. The application must be submitted on a department official form and must be accompanied by a licensed medical doctor's certification of disability.

~~((3) A person with a physical disability permit)~~ (4) A person with a combination fishing license issued under section 19 of this act is not required to be present at the location where ((another person is digging razor clams)) the designated harvester is harvesting shellfish for the disabled person. The ((physical disability permittee)) licensee is required to be in the direct line of sight of the ((person digging razor clams)) designated harvester who is harvesting shellfish for him or her, unless it is not possible to be in a direct line of sight because of a physical obstruction or other barrier. If such a barrier or obstruction

exists, the ~~((physical disability permittee))~~ licensee is required to be within one-quarter mile of the ~~((person who is digging razor clams))~~ designated harvester who is harvesting shellfish for him or her.

(5) Except as provided in subsection (4) of this section, the disabled person needs to be present and participating in the fishing activity.

Sec. 2. RCW 75.25.092 and 1994 c 255 s 4 are each amended to read as follows:

(1) A personal use shellfish and seaweed license is required for all persons other than residents or nonresidents under fifteen years of age to fish for, take, dig for, or possess seaweed or shellfish ~~((except crawfish (Pacifastacus sp.)))~~ for personal use from state waters or offshore waters including national park beaches.

(2) The fees for annual personal use shellfish and seaweed licenses are:

(a) For a resident fifteen years of age or older ~~((and under seventy years of age)), ((five))~~ seven dollars;

(b) For a ~~((resident seventy years of age or older))~~ nonresident fifteen years of age or older, ~~((three))~~ twenty dollars; and

(c) For a ~~((nonresident, twenty dollars.~~

~~—(3) The fee for a three consecutive day personal use shellfish and seaweed license is)~~ senior, five dollars.

Sec. 3. RCW 75.25.120 and 1994 c 255 s 6 are each amended to read as follows:

In concurrent waters of the Columbia river and in Washington coastal territorial waters from the Oregon-Washington boundary to a point five nautical miles north, an Oregon angling license comparable to the Washington personal use ~~((food fish license or three consecutive day personal use food fish))~~ fishing license is valid if Oregon recognizes as valid the Washington personal use ~~((food fish license or three consecutive day personal use food fish))~~ fishing license in comparable Oregon waters.

If Oregon recognizes as valid the Washington personal use ~~((food fish license or three consecutive day personal use food fish))~~ fishing license southward to Cape Falcon in the coastal territorial waters from the Washington-Oregon boundary and in concurrent waters of the Columbia river then Washington shall recognize a valid Oregon license comparable to the Washington personal use ~~((food fish license or three consecutive day personal use food fish))~~ fishing license northward to Leadbetter Point.

Oregon licenses are not valid for the taking of food fish or game fish when angling in concurrent waters of the Columbia river from the Washington shore.

Sec. 4. RCW 75.25.140 and 1993 sp.s. c 17 s 8 are each amended to read as follows:

(1) Recreational licenses are not transferable. Upon request of a ~~((fisheries patrol))~~ fish and wildlife officer, ex officio ~~((fisheries patrol))~~ fish and wildlife officer, or authorized ~~((fisheries))~~ fish and wildlife employee, a person digging for, fishing for, or possessing shellfish, ~~((for))~~ or seaweed or fishing for or

possessing food fish or game fish for personal use shall exhibit the required recreational license and write his or her signature for comparison with the signature on the license. Failure to comply with the request is prima facie evidence that the person does not have a license or is not the person named on the license.

(2) The personal use shellfish and seaweed license shall be visible on the licensee while harvesting shellfish or seaweed.

Sec. 5. RCW 75.25.190 and 1989 c 305 s 10 are each amended to read as follows:

Catch record cards necessary for proper management of the state's food fish and game fish species and shellfish resources shall be administered under rules adopted by the ((director)) commission and issued at no charge.

Sec. 6. RCW 77.32.005 and 1989 c 305 s 17 are each amended to read as follows:

~~((For the purposes of))~~ The definitions in this section apply throughout this chapter(;) unless the context clearly requires otherwise.

~~((A))~~ (1) "Resident" means a person who has maintained a permanent place of abode within this state for at least ninety days immediately preceding an application for a license, has established by formal evidence an intent to continue residing within this state, and who is not licensed to hunt or fish as a resident in another state.

~~((A))~~ (2) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(3) "Youth" means a person fifteen years old for fishing and under sixteen years old for hunting.

(4) "Senior" means a person seventy years old or older.

(5) "Food fish" has the same meaning as found in RCW 75.08.011.

(6) "Shellfish" has the same meaning as found in RCW 75.08.011.

(7) "Seaweed" has the same meaning as found in RCW 75.08.011.

(8) "License year" means the period of time for which a recreational license is valid. The license year begins April 1st, and ends March 31st.

(9) "Saltwater" means those marine waters seaward of river mouths.

(10) "Freshwater" means all waters not defined as saltwater including, but not limited to, rivers upstream of the river mouth, lakes, ponds, and reservoirs.

(11) "State waters" means all marine waters and freshwaters within ordinary high water lines and within the territorial boundaries of the state.

(12) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

Sec. 7. RCW 77.32.010 and 1987 c 506 s 76 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, a license issued by the director is required to:

(a) Hunt for wild animals, except bullfrogs, or wild birds ~~((or))~~, fish ~~((for game fish))~~ or harvest shellfish and seaweed, except smelt, albacore, carp, and crawfish;

(b) Practice taxidermy for profit;

(c) Deal in raw furs for profit;

(d) Act as a fishing guide;

(e) Operate a game farm;

(f) Purchase or sell anadromous game fish; or

(g) Use department-managed lands or facilities as provided by rules adopted pursuant to this title.

(2) A permit issued by the director is required to:

(a) Conduct, hold, or sponsor hunting or fishing contests or competitive field trials using live wildlife;

(b) Collect wild animals, wild birds, game fish, food fish, shellfish, or protected wildlife for research or display; or

(c) Stock game fish.

(3) Aquaculture as defined in RCW 15.85.020 is exempt from the requirements of this section, except when being stocked in public waters under contract with the department.

**Sec. 8.** RCW 77.32.014 and 1997 c 58 s 881 are each amended to read as follows:

(1) Licenses, tags, and stamps issued pursuant to this chapter shall be invalid for any period in which a person is certified by the department of social and health services or a court of competent jurisdiction as a person in noncompliance with a support order ~~((or residential or visitation order))~~. Fish and wildlife ~~((agents))~~ officers and ex officio fish and wildlife ~~((agents))~~ officers shall enforce this section through checks of the department of licensing's computer data base. A listing on the department of licensing's data base that an individual's license is currently suspended pursuant to RCW 46.20.291(7) shall be prima facie evidence that the individual is in noncompliance with a support order ~~((or residential or visitation order))~~. Presentation of a written release issued by the department of social and health services stating that the person is in compliance with an order shall serve as prima facie proof of compliance with a support order ~~((residential order, or visitation order))~~.

(2) It is unlawful to purchase, obtain, or possess a license required by this chapter during any period in which a license is suspended.

**Sec. 9.** RCW 77.32.025 and 1996 c 20 s 2 are each amended to read as follows:

Notwithstanding RCW 77.32.010, the commission may adopt rules designating times and places for the purposes of family fishing days when licenses and catch record cards are not required to fish ~~((for game fish, including steelhead trout))~~ or to harvest shellfish.

**Sec. 10.** RCW 77.32.050 and 1996 c 101 s 8 are each amended to read as follows:

All recreational licenses, permits, tags, and stamps required by this chapter and raffle tickets authorized under chapter 77.12 RCW shall be issued under the authority of the commission. ~~((The director may authorize department personnel, county auditors, or other reputable citizens to issue licenses, permits, tags, stamps, and raffle tickets, and collect the appropriate fees. The authorized persons shall pay on demand or before the tenth day of the following month the fees collected and shall make reports as required by the director.))~~ The ~~((director may))~~ commission shall adopt rules for ~~((issuing))~~ the issuance of recreational licenses, permits, tags, stamps, and raffle tickets, ~~((collecting and paying fees, and making reports))~~ and for the collection, payment, and handling of license fees, terms and conditions to govern dealers, and dealers' fees. Fees retained by dealers shall be uniform throughout the state.

**Sec. 11.** RCW 77.32.070 and 1995 c 116 s 3 are each amended to read as follows:

Applicants for a license, permit, tag, or stamp shall furnish the information required by the director. The ~~((director))~~ commission may adopt rules requiring licensees or permittees to keep records and make reports concerning the taking of fish, shellfish, and wildlife.

**Sec. 12.** RCW 77.32.090 and 1996 c 101 s 10 are each amended to read as follows:

The ~~((director))~~ commission may adopt rules pertaining to the form, period of validity, use, possession, and display of licenses, permits, tags, and stamps required by this chapter and raffle tickets authorized under chapter 77.12 RCW.

**NEW SECTION. Sec. 13.** (1) The commission shall adopt rules to continue funding current enhancement programs at levels equal to the participation of licensees in each of the individual enhancement programs. All enhancement funding will continue to be deposited directly into the individual accounts created for each enhancement.

(2) In implementing subsection (1) of this section with regard to warm water game fish, the department shall initially deposit in the warm water game fish account 6.512 percent of the funds received from the sale of each freshwater license and each freshwater, saltwater, and shellfish combination license. The percentage initially established in this subsection shall be adjusted annually to reflect the actual numbers of license holders fishing for warm water game fish based on an annual survey of licensed anglers conducted by the department beginning with the April 1, 2000, to March 31, 2001, license year. The legislature expects that implementing this subsection will result in annual deposits of at least one million two hundred fifty thousand dollars into the warm water game fish account.

**NEW SECTION. Sec. 14.** (1) A big game hunting license is required to hunt for big game. A big game license allows the holder to hunt for forest grouse and

the individual species identified within a specific big game combination license package. Each big game license includes one transport tag for each species purchased in that package. A hunter may not purchase more than one license for each big game species except as authorized by rule of the commission. The fees for annual big game combination packages are as follows:

(a) Big game number 1: Deer, elk, bear, and cougar. The fee for this license is sixty-six dollars for residents, six hundred sixty dollars for nonresidents, and thirty-three dollars for youth.

(b) Big game number 2: Deer and elk. The fee for this license is fifty-six dollars for residents, five hundred sixty dollars for nonresidents, and twenty-eight dollars for youth.

(c) Big game number 3: Deer or elk, bear, and cougar. At the time of purchase, the holder must identify either deer or elk. The fee for this license is forty-six dollars for residents, four hundred sixty dollars for nonresidents, and twenty-three dollars for youth.

(d) Big game number 4: Deer or elk. At the time of purchase, the holder must identify either deer or elk. The fee for this license is thirty-six dollars for residents, three hundred sixty dollars for nonresidents, and eighteen dollars for youth.

(e) Big game number 5: Bear and cougar. The fee for this license is twenty dollars for residents, two hundred dollars for nonresidents, and ten dollars for youth.

(2) In the event that the commission authorizes a two animal big game limit, the fees for the second animal are as follows:

(a) Elk: The fee is twenty dollars for residents, two hundred dollars for nonresidents, and ten dollars for youth.

(b) Deer: The fee is twenty dollars for residents, two hundred dollars for nonresidents, and ten dollars for youth.

(c) Bear: The fee is ten dollars for residents, one hundred dollars for nonresidents, and five dollars for youth.

(d) Cougar: The fee is ten dollars for residents, one hundred dollars for nonresidents, and five dollars for youth.

(3) In the event that the commission authorizes a special permit hunt for goat, sheep, or moose, the permit fees are as follows:

(a) Mountain goat: The fee is one hundred dollars for residents, one thousand dollars for nonresidents, and fifty dollars for youth.

(b) Sheep: The fee is one hundred dollars for residents, one thousand dollars for nonresidents, and fifty dollars for youth.

(c) Moose: The fee is one hundred dollars for residents, one thousand dollars for nonresidents, and fifty dollars for youth.

Authorization to hunt the species set out under subsection (3)(a) through (c) of this section is by special permit identified under RCW 77.32.370.



(4) The commission may adopt rules to reduce the price of a license or eliminate the transportation tag requirements concerning bear or cougar when necessary to meet harvest objectives.

**NEW SECTION. Sec. 15.** (1) A small game hunting license is required to hunt for all wild animals and wild birds, except big game. The small game license includes one transport tag for turkey.

(a) The fee for this license is thirty dollars for residents, one hundred fifty dollars for nonresidents, and fifteen dollars for youth.

(b) The fee for this license if purchased in conjunction with a big game combination license package is sixteen dollars for residents, eighty dollars for nonresidents, and eight dollars for youth.

(c) The fee for a three-consecutive-day small game license is fifty dollars for nonresidents.

(2) The fee for each additional turkey tag is eighteen dollars for residents, sixty dollars for nonresidents, and nine dollars for youth.

**NEW SECTION. Sec. 16.** (1) A personal use saltwater, freshwater, combination, temporary, or family fishing weekend license is required for all persons fifteen years of age or older to fish for or possess fish taken for personal use from state waters or offshore waters.

(2) The fees for annual personal use saltwater, freshwater, or combination licenses are as follows:

(a) A combination license allows the holder to fish for or possess fish, shellfish, and seaweed from state waters or offshore waters. The fee for this license is thirty-six dollars for residents, seventy-two dollars for nonresidents, and five dollars for youth.

(b) A saltwater license allows the holder to fish for or possess fish taken from saltwater areas. The fee for this license is eighteen dollars for residents, thirty-six dollars for nonresidents, and five dollars for resident seniors.

(c) A freshwater license allows the holder to fish for, take, or possess food fish or game fish species in all freshwater areas. The fee for this license is twenty dollars for residents, forty dollars for nonresidents, and five dollars for resident seniors.

(3) A temporary fishing license is valid for two consecutive days and allows the holder to fish for or possess fish taken from state waters or offshore waters. The fee for this temporary fishing license is six dollars for both residents and nonresidents. This license is not valid on game fish species for an eight-consecutive-day period beginning on the opening day of the lowland lake fishing season.

(4) A family fishing weekend license allows for a maximum of six anglers: One resident and five youth; two residents and four youth; or one resident, one nonresident, and four youth. This license allows the holders to fish for or possess fish taken from state waters or offshore waters. The fee for this license is twenty

dollars. This license is only valid during periods as specified by rule of the department.

(5) The commission may adopt rules to create and sell combination licenses for all hunting and fishing activities at or below a fee equal to the total cost of the individual license contained within any combination.

**Sec. 17.** RCW 77.32.155 and 1993 c 85 s 1 are each amended to read as follows:

When purchasing ((a)) any hunting license, persons under the age of eighteen shall present certification of completion of a course of instruction of at least ten hours in the safe handling of firearms, safety, conservation, and sportsmanship. Beginning January 1, 1995, all persons purchasing ((a)) any hunting license for the first time, if born after January 1, 1972, shall present such certification.

The director may establish a program for training persons in the safe handling of firearms, conservation, and sportsmanship and may cooperate with the National Rifle Association, organized sportsmen's groups, or other public or private organizations.

The director shall prescribe the type of instruction and the qualifications of the instructors.

Upon successful completion of the course, a trainee shall receive a hunter education certificate signed by an authorized instructor. The certificate is evidence of compliance with this section.

The director may accept certificates from other states that persons have successfully completed firearm safety, hunter education, or similar courses as evidence of compliance with this section.

**NEW SECTION.** **Sec. 18.** All hunting licenses shall, upon written application, be issued at the reduced rate of a youth hunting license fee for the following individuals:

- (1) A resident sixty-five years old or older who is an honorably discharged veteran of the United States armed forces having a service-connected disability;
- (2) Residents who are honorably discharged veterans of the United States armed forces with a thirty percent or more service-connected disability; and
- (3) An honorably discharged veteran of the United States armed forces who is a resident and is confined to a wheelchair.

**NEW SECTION.** **Sec. 19.** A combination fishing license shall, upon written application, be issued at the reduced rate of five dollars to the following individuals:

- (1) Residents who are honorably discharged veterans of the United States armed forces with a thirty percent or more service-connected disability;
- (2) A person who is blind;
- (3) A person with a developmental disability as defined in RCW 71A.10.020 with documentation of the disability certified by a physician licensed to practice in this state; and
- (4) A person who is physically disabled and confined to a wheelchair.

**Sec. 20.** RCW 77.32.235 and 1990 c 35 s 4 are each amended to read as follows:

Physically or mentally (~~handicapped~~) disabled persons, mentally ill persons, hospital patients, and senior citizens who are in the care of a state-licensed or state-operated care facility may fish (~~for game fish~~) and harvest shellfish during open season without individual licenses or the payment of individual license fees if such fishing activity is occasional, is conducted in a group supervised by staff of (~~a state-licensed or state-operated~~) the care facility, and the facility holds a group fishing permit issued by the director. The director shall issue such a permit upon application by care facility staff.

**Sec. 21.** RCW 77.32.240 and 1991 sp.s. c 7 s 6 are each amended to read as follows:

A scientific permit allows the holder to collect for research or display food fish, game fish, shellfish, and wildlife (~~or their~~), including avian nests and eggs as required in RCW 77.32.010, under conditions prescribed by the director. Before a permit is issued, the applicant shall demonstrate to the director their qualifications and establish the need for the permit. The director may require a bond of up to one thousand dollars to (~~insure~~) ensure compliance with the permit. Permits are valid for the time specified, unless sooner revoked.

Holders of permits may exchange specimens with the approval of the director.

A permit holder who violates this section shall forfeit the permit and bond and shall not receive a similar permit for one year. The fee for a scientific permit is twelve dollars.

**Sec. 22.** RCW 77.32.250 and 1996 c 101 s 12 are each amended to read as follows:

Licenses, permits, tags, and stamps required by this chapter and raffle tickets authorized under chapter 77.12 RCW shall not be transferred (~~and, unless otherwise provided in this chapter, are void on January 1st following the year for which the license, permit, tag, stamp, or raffle ticket was issued~~).

Upon request of a fish and wildlife (~~agent~~) officer or ex officio fish and wildlife (~~agent~~) officer, persons licensed, operating under a permit, or possessing wildlife under the authority of this chapter shall produce required licenses, permits, tags, stamps, or raffle tickets for inspection and write their signatures for comparison and in addition display their wildlife. Failure to comply with the request is prima facie evidence that the person has no license or is not the person named.

**Sec. 23.** RCW 77.32.320 and 1997 c 114 s 1 are each amended to read as follows:

(1) (~~In addition to a basic hunting license, a separate transport tag is~~) The correct licenses and tags are required to hunt deer, elk, black bear, cougar, sheep, mountain goat, moose, or wild turkey (~~However, a transport tag may not be required to hunt black bear or cougar when, under conditions set out under RCW~~

~~77.32.340, the commission determines that for the purposes of achieving harvest management goals for black bear or cougar, that transport tags shall be available at no cost)) except as provided in section 14 of this act.~~

~~(2) ((A transport tag may only be obtained subsequent to the purchase of a valid hunting license and must have permanently affixed to it the hunting license number.~~

~~—(3)) Persons who kill deer, elk, bear, cougar, mountain goat, sheep, moose, or wild turkey shall immediately validate and attach their own transport tag to the carcass as provided by rule of the director.~~

~~((4) Transport tags required by this section expire on March 31st following the date of issuance.))~~

**Sec. 24.** RCW 77.32.350 and 1992 c 41 s 1 are each amended to read as follows:

In addition to a basic hunting license, a supplemental license, permit, or stamp is required to hunt for quail, partridge, pheasant, or migratory waterfowl, to hunt with a raptor, or to hunt wild animals with a dog.

(1) A hound permit is required to hunt wild animals, except rabbits and hares, with a dog. The fee for this permit is twelve dollars.

(2) An eastern Washington upland game bird permit is required to hunt for quail, partridge, and pheasant in eastern Washington. The fee for this permit is ten dollars.

(3) A western Washington upland game bird permit is required to hunt for quail, partridge, and pheasant in western Washington. The fee for this permit is thirty-five dollars. Western Washington upland game bird permits must contain numbered spaces for recording the location and date of harvest of each western Washington pheasant. It is unlawful to harvest a western Washington pheasant without immediately recording this information on the permit.

(4) Effective January 1, 1993, the permit shall be available as a season option, a juvenile full season option, or a two-day option. The fee for this permit is:

(a) For the full season option, thirty-five dollars;

(b) For the juvenile full season or the two-day option, twenty dollars.

For the purposes of this subsection a juvenile is defined as a person under fifteen years of age upon the opening date of the western Washington pheasant season.

(5) Western Washington upland game permits are valid for the following number of pheasants and harvesting pheasants in excess of these numbers requires another permit:

(a) A full season permit is valid for no more than ten pheasants;

(b) A juvenile full season permit is valid for no more than six pheasants;

(c) A two-day permit is valid for no more than four pheasants.

(6) A falconry license is required to possess or hunt with a raptor, including seasons established exclusively for hunting in that manner. The fee for this license is thirty-six dollars.

(7) A migratory ~~((waterfowl))~~ bird stamp affixed to a ~~((basic))~~ hunting license designated by rule of the commission is required for all persons sixteen years of age or older to hunt migratory ~~((waterfowl))~~ birds. The fee for the stamp for hunters is six dollars for residents and nonresidents. The fee for the stamp for collectors is six dollars.

(8) The migratory ~~((waterfowl))~~ bird stamp shall be validated by the signature of the licensee written across the face of the stamp.

(9) The migratory ~~((waterfowl))~~ bird stamps required by this section expire on March 31st following the date of issuance.

Sec. 25. RCW 77.32.350 and 1998 c . . . s 24 (section 24 of this act) are each amended to read as follows:

In addition to a ~~((basic))~~ small game hunting license, a supplemental ~~((license;))~~ permit~~(;)~~ or stamp is required to hunt for ~~((quail, partridge;))~~ western Washington pheasant~~(;)~~ or migratory ~~((waterfowl, to hunt with a raptor, or to hunt wild animals with a dog))~~ birds.

~~(1) ((A hound permit is required to hunt wild animals, except rabbits and hares, with a dog. The fee for this permit is twelve dollars.~~

~~(2) An eastern Washington upland game bird permit is required to hunt for quail, partridge, and pheasant in eastern Washington. The fee for this permit is ten dollars.~~

~~(3)) A western Washington ((upland game bird)) pheasant permit is required to hunt for ((quail, partridge, and)) pheasant in western Washington. ((The fee for this permit is thirty-five dollars.)) Western Washington ((upland game bird)) pheasant permits must contain numbered spaces for recording the location and date of harvest of each western Washington pheasant. It is unlawful to harvest a western Washington pheasant without immediately recording this information on the permit.~~

~~((4) Effective January 1, 1993;)) (2) The permit shall be available as a season option, a ((juvenile)) youth full season option, or a ((two-day)) three-day option. The fee for this permit is:~~

~~(a) For the resident and nonresident full season option, ((thirty-five)) thirty-six dollars;~~

~~(b) For the ((juvenile)) youth full season ((or the two-day)) option, ((twenty)) eighteen dollars;~~

~~(c) For the three-day option, twenty dollars.~~

~~((For the purposes of this subsection a juvenile is defined as a person under fifteen years of age upon the opening date of the western Washington pheasant season:~~

~~(5) Western Washington upland game permits are valid for the following number of pheasants and harvesting pheasants in excess of these numbers requires another permit:~~

~~(a) A full season permit is valid for no more than ten pheasants;~~

~~(b) A juvenile full season permit is valid for no more than six pheasants;~~

~~(c) A two-day permit is valid for no more than four pheasants;~~

~~—(6) A falconry license is required to possess or hunt with a raptor, including seasons established exclusively for hunting in that manner. The fee for this license is thirty-six dollars.~~

~~—(7))~~ (3) A migratory bird stamp affixed to a hunting license designated by rule of the commission is required for all persons sixteen years of age or older to hunt migratory birds. The fee for the stamp for hunters is six dollars for residents and nonresidents. The fee for the stamp for collectors is six dollars.

((8)) (4) The migratory bird stamp shall be validated by the signature of the licensee written across the face of the stamp.

((9) ~~The migratory bird stamps required by this section expire on March 31st following the date of issuance.~~)

Sec. 26. RCW 77.32.370 and 1991 sp.s. c 7 s 11 are each amended to read as follows:

(1) A special hunting season permit is required to hunt in each special season established under chapter 77.12 RCW.

(2) Persons may apply for special hunting season permits as provided by rule of the ~~((director))~~ commission.

(3) The application fee to ~~((participate in))~~ enter the drawing for a special hunting ((season)) permit is ~~((three))~~ five dollars for residents, fifty dollars for nonresidents, and three dollars for youth.

Sec. 27. RCW 75.50.100 and 1995 1st sp.s. c 2 s 39 are each amended to read as follows:

The dedicated regional fisheries enhancement group account is created in the custody of the state treasurer. Only the commission or the commission's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

A ~~((surcharge of one dollar shall be collected on each recreational personal use food fish license sold in the state))~~ portion of each recreational fishing license fee shall be used as provided in section 13 of this act. A surcharge of one hundred dollars shall be collected on each commercial salmon fishery license, each salmon delivery license, and each salmon charter license sold in the state. The department shall study methods for collecting and making available, an annual list, including names and addresses, of all persons who obtain recreational and commercial salmon fishing licenses. This list may be used to assist formation of the regional fisheries enhancement groups and allow the broadest participation of license holders in enhancement efforts. The results of the study shall be reported to the house of representatives fisheries and wildlife committee and the senate environment and natural resources committee by October 1, 1990. All receipts shall be placed in the regional fisheries enhancement group account and shall be used exclusively for regional fisheries enhancement group projects for the purposes of RCW 75.50.110. Funds from the regional fisheries enhancement

group account shall not serve as replacement funding for department operated salmon projects that exist on January 1, 1991.

All revenue from the department's sale of salmon carcasses and eggs that return to group facilities shall be deposited in the regional fisheries enhancement group account for use by the regional fisheries enhancement group that produced the surplus. The commission shall adopt rules to implement this section pursuant to chapter 34.05 RCW.

**Sec. 28.** RCW 75.54.140 and 1997 c 197 s 1 are each amended to read as follows:

~~((Beginning January 1, 1994, persons who recreationally fish for salmon or marine bottomfish in marine area codes 5 through 13 and Lake Washington and have an annual food fish license shall be assessed an annual recreational surcharge of ten dollars, in addition to other licensing requirements. Persons who recreationally fish for salmon or marine bottomfish in marine area codes 5 through 13 and Lake Washington with a three consecutive day personal use food fish license shall be assessed an annual recreational surcharge of five dollars. Funds from the surcharge))~~ As provided in section 13 of this act, a portion of each saltwater and combination fishing license fee shall be deposited in the recreational fisheries enhancement account created in RCW 75.54.150~~((, except that the first five hundred thousand dollars shall be deposited in the general fund before June 30, 1995, to repay the appropriation made by section 104, chapter 2, Laws of 1993 sp. sess)).~~

**Sec. 29.** RCW 77.44.030 and 1996 c 222 s 3 are each amended to read as follows:

(1) ~~((A warm water game fish surcharge allows a person to fish throughout the state for))~~ As provided in section 13 of this act, a portion of each freshwater and combination fishing license fee shall be deposited into the warm water game fish account.

(2) ~~((The annual fee for a game fish surcharge is five dollars and the surcharge is required in addition to an annual game fishing license, except for those persons under fifteen years of age for which there is no charge. Holders of three-day resident fishing licenses, three-day nonresident fishing licenses, and nonresident annual fishing licenses shall pay a five-dollar surcharge to fish for warm water fish.~~

~~—(3))~~ The department shall use the most cost-effective format in designing and administering the warm water game fish surcharge.

~~((4))~~ (3) A warm water game fish ~~((surecharge))~~ account shall ~~((only))~~ be ~~((required to fish))~~ used ~~for~~ ~~((:))~~ enhancement of largemouth bass, smallmouth bass, walleye, black crappie, white crappie, channel catfish, and tiger musky.

**Sec. 30.** RCW 77.12.810 and 1997 c 422 s 4 are each amended to read as follows:

~~((Beginning September 1, 1997, a person who hunts for pheasant in eastern Washington must pay an annual surcharge of ten dollars, in addition to other~~

~~licensing requirements. Funds from the surcharge must be)~~ As provided in section 13 of this act, a portion of each small game hunting license fee shall be deposited in the eastern Washington pheasant enhancement account created in RCW 77.12.820.

**Sec. 31.** RCW 77.08.045 and 1987 c 506 s 12 are each amended to read as follows:

As used in this title or rules adopted pursuant to this title:

(1) "Migratory waterfowl" means members of the family Anatidae, including brants, ducks, geese, and swans;

(2) "Migratory bird" means migratory waterfowl and coots, snipe, doves, and band-tailed pigeon;

(3) "Migratory (~~(waterfowl)~~) bird stamp" means the stamp that is required by RCW 77.32.350 to be in the possession of all persons (~~(over sixteen years of age)~~) to hunt migratory (~~(waterfowl)~~) birds;

~~((3))~~ (4) "Prints and artwork" means replicas of the original stamp design that are sold to the general public. Prints and artwork are not to be construed to be the migratory (~~(waterfowl)~~) bird stamp that is required by RCW 77.32.350. Artwork may be any facsimile of the original stamp design, including color renditions, metal duplications, or any other kind of design; and

~~((4))~~ (5) "Migratory waterfowl art committee" means the committee created by RCW 77.12.680. The committee's primary function is to select the annual migratory (~~(waterfowl)~~) bird stamp design.

**Sec. 32.** RCW 77.12.670 and 1987 c 506 s 53 are each amended to read as follows:

(1) The migratory (~~(waterfowl)~~) bird stamp to be produced by the department shall use the design as provided by the migratory waterfowl art committee.

(2) All revenue derived from the sale of the stamps by the department to any person hunting waterfowl or to any stamp collector shall be deposited in the state wildlife fund and shall be used only for that portion of the cost of printing and production of the stamps for migratory waterfowl hunters as determined by subsection (4) of this section, and for those migratory waterfowl projects specified by the director of the department for the acquisition and development of migratory waterfowl habitat in the state and for the enhancement, protection, and propagation of migratory waterfowl in the state.

(3) All revenue derived from the sale of the stamp by the department to persons hunting solely nonwaterfowl migratory birds shall be deposited in the state wildlife fund and shall be used only for that portion of the cost of printing and production of the stamps for nonwaterfowl migratory bird hunters as determined by subsection (4) of this section, and for those nonwaterfowl migratory bird projects specified by the director for the acquisition and development of nonwaterfowl migratory bird habitat in the state and for the enhancement, protection, and propagation of nonwaterfowl migratory birds in the state.



(4) With regard to the revenue from stamp sales that is not the result of sales to stamp collectors, the department shall determine the proportion of migratory waterfowl hunters and solely nonwaterfowl migratory bird hunters by using the yearly migratory bird hunter harvest information program survey results or, in the event that these results are not available, other similar survey results. A two-year average of the most recent survey results shall be used to determine the proportion of the revenue attributed to migratory waterfowl hunters and the proportion attributed to solely nonwaterfowl migratory bird hunters for each fiscal year. For fiscal year 1998-99 and for fiscal year 1999-2000, ninety-six percent of the stamp revenue shall be attributed to migratory waterfowl hunters and four percent of the stamp revenue shall be attributed to solely nonwaterfowl migratory game hunters.

(5) Acquisition shall include but not be limited to the acceptance of gifts of real estate or any interest therein or the rental, lease, or purchase of real estate or any interest therein. If the department acquires any fee interest, leasehold, or rental interest in real property under this section, it shall allow the general public reasonable access to that property and shall, if appropriate, insure that the deed or other instrument creating the interest allows such access to the general public. If the department obtains a covenant in real property in its favor or an easement or any other interest in real property under this section, it shall exercise its best efforts to insure that the deed or other instrument creating the interest grants to the general public in the form of a covenant running with the land reasonable access to the property. The private landowner from whom the department obtains such a covenant or easement shall retain the right of granting access to the lands by written permission.

(6) The department may produce migratory (~~waterfowl~~) bird stamps in any given year in excess of those necessary for sale in that year. The excess stamps may be sold to the migratory waterfowl art committee for sale to the public.

Sec. 33. RCW 77.12.690 and 1987 c 506 s 55 are each amended to read as follows:

The migratory waterfowl art committee is responsible for the selection of the annual migratory (~~waterfowl~~) bird stamp design and shall provide the design to the department. If the committee does not perform this duty within the time frame necessary to achieve proper and timely distribution of the stamps to license dealers, the director shall initiate the art work selection for that year. The committee shall create collector art prints and related artwork, utilizing the same design as provided to the department. The administration, sale, distribution, and other matters relating to the prints and sales of stamps with prints and related artwork shall be the responsibility of the migratory waterfowl art committee.

The total amount brought in from the sale of prints and related artwork shall be deposited in the state wildlife fund. The costs of producing and marketing of prints and related artwork, including administrative expenses mutually agreed upon by the committee and the director, shall be paid out of the total amount brought in from sales of those same items. Net funds derived from the sale of prints and related artwork shall be used by the director to contract with one or

more appropriate individuals or nonprofit organizations for the development of waterfowl propagation projects within Washington which specifically provide waterfowl for the Pacific flyway. The department shall not contract with any individual or organization that obtains compensation for allowing waterfowl hunting except if the individual or organization does not permit hunting for compensation on the subject property.

The migratory waterfowl art committee shall have an annual audit of its finances conducted by the state auditor and shall furnish a copy of the audit to the commission and to the natural resources committees of the house and senate.

*\*Sec. 34. RCW 77.16.310 and 1981 c 310 s 4 are each amended to read as follows:*

*It is unlawful to purchase, obtain, or possess or to attempt to purchase or obtain a license, permit, stamp, or tag required by this title:*

- (1) By using false information; or*
- (2) After notice of the revocation or forfeiture of an existing license, permit, or tag, except that a person may purchase a license that does not grant the privilege that was revoked; or*
- (3) In excess of one license, permit, tag, stamp, or punchcard for a license year except as authorized by RCW 77.32.256, section 14 of this act, or other law or rule of the commission.*

*\*Sec. 34 was vetoed. See message at end of chapter.*

**Sec. 35.** RCW 77.21.020 and 1987 c 506 s 70 are each amended to read as follows:

In addition to other penalties provided by law, the director shall revoke ~~((the))~~ all hunting licenses of a person who is convicted of a violation of RCW 77.16.020 involving big game or RCW 77.16.050. Forfeiture of bail twice during a five-year period for these violations constitutes the basis for a revocation under this section.

~~((A))~~ No hunting license ~~((shall not))~~ may be issued to the person for two years from the revocation.

A person who has had a license revoked or has been denied issuance pursuant to this section or RCW 77.21.030, may appeal the decision as provided in chapter 34.05 RCW.

**Sec. 36.** RCW 77.21.030 and 1987 c 506 s 71 are each amended to read as follows:

The director shall revoke ~~((the))~~ all hunting licenses of a person who shoots another person or domestic livestock while hunting. A hunting license shall not be issued to that person unless the director authorizes the issuance of a license, and damages caused by the wrongful shooting have been paid.

*\*Sec. 37. RCW 77.16.330 and 1987 c 506 s 104 are each amended to read as follows:*

*It is unlawful for any person (~~sixteen years of age or older~~) to hunt any migratory (~~waterfowl~~) bird without first obtaining a migratory (~~waterfowl~~) bird stamp as required by RCW 77.32.350.*

\*Sec. 37 was vetoed. See message at end of chapter.

Sec. 38. RCW 77.12.170 and 1996 c 101 s 7 are each amended to read as follows:

(1) There is established in the state treasury the state wildlife fund which consists of moneys received from:

(a) Rentals or concessions of the department;

(b) The sale of real or personal property held for department purposes;

(c) The sale of licenses, permits, tags, stamps, and punchcards required by this title, except annual resident adult saltwater and all shellfish licenses, which shall be deposited into the state general fund;

(d) Fees for informational materials published by the department;

(e) Fees for personalized vehicle license plates as provided in chapter 46.16 RCW;

(f) Articles or wildlife sold by the director under this title;

(g) Compensation for wildlife losses or gifts or grants received under RCW 77.12.320;

(h) Excise tax on anadromous game fish collected under chapter 82.27 RCW;

(i) The sale of personal property seized by the department for wildlife violations; and

(j) The department's share of revenues from auctions and raffles authorized by the commission.

(2) State and county officers receiving any moneys listed in subsection (1) of this section shall deposit them in the state treasury to be credited to the state wildlife fund.

Sec. 39. RCW 77.44.010 and 1996 c 222 s 1 are each amended to read as follows:

A warm water game fish enhancement program is created in the department (~~(to be funded from the sale of a warm water game fish surcharge)~~). The enhancement program shall be designed to increase the opportunities to fish for and catch warm water game fish including: Largemouth black bass, smallmouth black bass, channel catfish, black crappie, white crappie, walleye, and tiger musky. The program shall be designed to use a practical applied approach to increasing warm water fishing. The department shall use the funds available efficiently to assure the greatest increase in the fishing for warm water fish at the lowest cost. This approach shall involve the minimization of overhead and administrative costs and the maximization of productive in-the-field activities.

**NEW SECTION.** Sec. 40. The department of fish and wildlife has the authority to sell fifteen-month prorated shellfish, fish, and small game licenses to accommodate the change in license year, as defined in RCW 77.32.005. This

authority only applies to the period beginning January 1, 1999, and ending April 1, 2000.

**NEW SECTION. Sec. 41.** In order to simplify fishing license requirements in transition areas between saltwater and freshwater, the commission may adopt rules designating specific waters where either a freshwater or a saltwater license is valid.

**NEW SECTION. Sec. 42.** RCW 75.25.080, 75.25.120, 75.25.140, and 75.25.190 are each recodified as new sections in chapter 77.32 RCW.

**NEW SECTION. Sec. 43.** As provided in RCW 77.12.170(1)(c), all recreational license fees deposited into the general fund shall be appropriated for the management, enhancement, research, and enforcement of shellfish and saltwater programs of the department.

**NEW SECTION. Sec. 44.** The following acts or parts of acts are each repealed:

(1) RCW 75.25.005 and 1993 sp.s. c 17 s 4, 1993 sp.s. c 2 s 41, & 1989 c 305 s 1;

(2) RCW 75.25.091 and 1994 c 255 s 3 & 1993 sp.s. c 17 s 2;

(3) RCW 75.25.095 and 1996 c 20 s 1, 1995 1st sp.s. c 2 s 31, & 1990 c 34 s 2;

(4) RCW 75.25.110 and 1994 c 255 s 5, 1993 sp.s. c 17 s 6, 1989 c 305 s 8, 1987 c 87 s 3, 1983 1st ex.s. c 46 s 95, & 1977 ex.s. c 327 s 13;

(5) RCW 75.25.130 and 1989 c 305 s 11, 1987 c 87 s 6, 1984 c 80 s 7, 1983 1st ex.s. c 46 s 97, & 1977 ex.s. c 327 s 12;

(6) RCW 75.25.150 and 1994 c 255 s 7, 1993 sp.s. c 17 s 9, 1989 c 305 s 13, 1984 c 80 s 9, & 1983 1st ex.s. c 46 s 99;

(7) RCW 75.25.170 and 1993 sp.s. c 2 s 43, 1989 c 305 s 16, & 1987 c 87 s 9;

(8) RCW 75.25.180 and 1994 c 255 s 8;

(9) RCW 75.25.200 and 1990 c 35 s 2;

(10) RCW 77.32.092 and 1994 c 255 s 1;

(11) RCW 77.32.101 and 1997 c 395 s 1, 1994 c 255 s 11, 1991 sp.s. c 7 s 1, 1985 c 464 s 2, 1981 c 310 s 20, 1980 c 78 s 110, & 1975 1st ex.s. c 15 s 20;

(12) RCW 77.32.161 and 1994 c 255 s 10, 1991 sp.s. c 7 s 2, 1985 c 464 s 3, 1981 c 310 s 22, 1980 c 78 s 112, & 1975 1st ex.s. c 15 s 27;

(13) RCW 77.32.230 and 1996 c 101 s 11, 1994 c 255 s 12, 1991 sp.s. c 7 s 5, 1988 c 176 s 914, 1987 c 506 s 85, 1985 c 464 s 6, 1985 c 182 s 2, 1983 c 280 s 1, 1981 c 310 s 27, 1980 c 78 s 117, 1973 1st ex.s. c 58 s 1, 1961 c 94 s 2, 1959 c 245 s 2, & 1955 c 36 s 77.32.230;

(14) RCW 77.32.340 and 1997 c 114 s 2, 1991 sp.s. c 7 s 8, 1990 c 84 s 5, 1985 c 464 s 8, 1984 c 240 s 5, & 1981 c 310 s 11;

(15) RCW 77.32.352 and 1995 c 59 s 1;

(16) RCW 77.32.360 and 1996 c 234 s 1, 1995 c 116 s 7, 1991 sp.s. c 7 s 10, 1990 c 84 s 7, 1987 c 506 s 88, 1985 c 464 s 10, & 1981 c 310 s 13; and

(17) RCW 77.32.390 and 1989 c 153 s 1.

**NEW SECTION. Sec. 45.** RCW 77.32.060 and 1996 c 101 s 9, 1995 c 116 s 2, 1987 c 506 s 78, 1985 c 464 s 1, 1981 c 310 s 17, 1980 c 78 s 107, 1979 ex.s. c 3 s 3, 1970 ex.s. c 29 s 2, 1957 c 176 s 2, & 1955 c 36 s 77.32.060 are each repealed.

**NEW SECTION. Sec. 46.** The following acts or parts of acts are each repealed effective April 1, 1999:

- (1) RCW 75.08.274 and 1995 1st sp.s. c 2 s 15, 1983 1st ex.s. c 46 s 28, 1971 c 35 s 1, & 1955 c 12 s 75.16.010; and
- (2) RCW 75.25.012 and 1997 c 58 s 880.

**NEW SECTION. Sec. 47.** Sections 13 through 16, 18, 19, and 43 of this act are each added to chapter 77.32 RCW.

**NEW SECTION. Sec. 48.** Sections 1 through 9, 11 through 23, 25 through 30, 34 through 36, 38 through 42, and 44 of this act take effect January 1, 1999.

**NEW SECTION. Sec. 49.** Sections 10, 24, 31 through 33, 37, 43, and 45 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

**NEW SECTION. Sec. 50.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.

Passed the Senate March 9, 1998.

Passed the House March 5, 1998.

Approved by the Governor March 27, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 27, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 34 and 37, Second Substitute Senate Bill No. 6330 entitled:

"AN ACT Relating to fish and wildlife licenses;"

2SSB 6330 will simplify the recreational hunting and license system, which will ultimately reduce the number of license documents and improve service to the public. The bill is also necessary to implement a point-of-sale license system which allows dealers to make sales through an on-line terminal rather than using the existing paper system.

Sections 34 and 37 of 2SSB 6330 would amend statutes that were repealed by Engrossed Substitute Senate Bill No. 6328, which I signed today. This partial veto will ensure that the two bills are consistent.

For these reasons, I have vetoed sections 34 and 37 of Second Substitute Senate Bill No. 6330.

With the exception of sections 34 and 37, Second Substitute Senate Bill No. 6330 is approved."

## CHAPTER 192

[Substitute Senate Bill 6346]

## WITHDRAWALS OF CITIES FROM REGIONAL TRANSIT AUTHORITIES

AN ACT Relating to the incorporation of a city simultaneously with voter approval of local option taxes under chapters 81.104 and 81.112 RCW where the city's municipal boundaries cross the boundaries of a regional transit authority; amending RCW 81.112.050; and providing an expiration date.

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

**Sec. 1.** RCW 81.112.050 and 1992 c 101 s 5 are each amended to read as follows:

(1) At the time of formation, the area to be included within the boundary of the authority shall be that area set forth in the system plan adopted by the joint regional policy committee. Prior to submitting the system and financing plan to the voters, the authority may make adjustments to the boundaries as deemed appropriate but must assure that, to the extent possible, the boundaries: (a) Include the largest-population urban growth area designated by each county under chapter 36.70A RCW; and (b) follow election precinct boundaries. If a portion of any city is determined to be within the service area, the entire city must be included within the boundaries of the authority.

(2) After voters within the authority boundaries have approved the system and financing plan, elections to add areas contiguous to the authority boundaries may be called by resolution of the regional transit authority, after consultation with affected transit agencies and with the concurrence of the legislative authority of the city or town if the area is incorporated, or with the concurrence of the county legislative authority if the area is unincorporated. Only those areas that would benefit from the services provided by the authority may be included and services or projects proposed for the area must be consistent with the regional transportation plan. The election may include a single ballot proposition providing for annexation to the authority boundaries and imposition of the taxes at rates already imposed within the authority boundaries.

(3) Upon receipt of a resolution requesting exclusion from the boundaries of the authority from a city whose municipal boundaries cross the boundaries of an authority and thereby result in only a portion of the city being subject to local option taxes imposed by the authority under chapters 81.104 and 81.112 RCW in order to implement a high-capacity transit plan, and where the vote to approve the city's incorporation occurred simultaneously with an election approving the local option taxes, then upon a two-thirds majority vote of the governing board of the authority, the governing board shall redraw the boundaries of the authority to exclude that portion of the city that is located within the authority's boundaries, and the excluded area is no longer subject to local option taxes imposed by the authority. This subsection expires December 31, 1998.

Passed the Senate February 12, 1998.  
 Passed the House March 5, 1998.  
 Approved by the Governor March 27, 1998.  
 Filed in Office of Secretary of State March 27, 1998.

### CHAPTER 193

[Senate Bill 6352]

#### EXAMINATION ELIGIBILITY REQUIREMENTS FOR WASHINGTON STATE PATROL OFFICERS

AN ACT Relating to examination eligibility requirements for Washington state patrol officers; and amending RCW 43.43.350.

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

**Sec. 1.** RCW 43.43.350 and 1969 ex.s. c 20 s 2 are each amended to read as follows:

Eligibility for examination ((or)) for promotion shall be determined as follows:

Patrol officers with one year of probationary experience, in addition to three years experience as a regular patrolman before the date of the first examination occurrence, shall be eligible for examination for the rank of sergeant; patrol officers with one year of probationary experience in the rank of sergeant before the date of the first examination occurrence, in addition to two years as a regular sergeant, shall be eligible for examination for the rank of lieutenant.

Passed the Senate February 12, 1998.  
 Passed the House March 5, 1998.  
 Approved by the Governor March 27, 1998.  
 Filed in Office of Secretary of State March 27, 1998.

### CHAPTER 194

[Senate Bill 6353]

#### WASHINGTON STATE PATROL OFFICERS DISABILITY-- REFLECTION OF ACTUAL WORKING HOURS

AN ACT Relating to use of sick leave before eligibility for disability requirements of Washington state patrol officers; and amending RCW 43.43.040.

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

**Sec. 1.** RCW 43.43.040 and 1987 c 185 s 17 are each amended to read as follows:

(1) The chief of the Washington state patrol shall relieve from active duty Washington state patrol officers who, while in the performance of their official duties, or while on standby or available for duty, have been or hereafter may be injured or incapacitated to such an extent as to be mentally or physically incapable of active service: PROVIDED, That:

(a) Any officer disabled while performing line duty who is found by the chief to be physically incapacitated shall be placed on disability leave for a period not to exceed six months from the date of injury or the date incapacitated. During this period, the officer shall be entitled to all pay, benefits, insurance, leave, and retirement contributions awarded to an officer on active status, less any compensation received through the department of labor and industries. No such disability leave shall be approved until an officer has been unavailable for duty for more than ~~((five))~~ forty consecutive work ~~((days))~~ hours. Prior to the end of the six-month period, the chief shall either place the officer on disability status or return the officer to active status.

For the purposes of this section, "line duty" is active service which encompasses the traffic law enforcement duties and/or other law enforcement responsibilities of the state patrol. These activities encompass all enforcement practices of the laws, accident and criminal investigations, or actions requiring physical exertion or exposure to hazardous elements.

The chief shall define by rule the situations where a disability has occurred during line duty;

(b) Benefits under this section for a disability that is incurred while in other employment will be reduced by any amount the officer receives or is entitled to receive from workers' compensation, social security, group insurance, other pension plan, or any other similar source provided by another employer on account of the same disability;

(c) An officer injured while engaged in willfully tortious or criminal conduct shall not be entitled to disability benefits under this section; and

(d) Should a disability beneficiary whose disability was not incurred in line of duty, prior to attaining age fifty, engage in a gainful occupation, the chief shall reduce the amount of his retirement allowance to an amount which when added to the compensation earned by him in such occupation shall not exceed the basic salary currently being paid for the rank the retired officer held at the time he was disabled. All such disability beneficiaries under age fifty shall file with the chief every six months a signed and sworn statement of earnings and any person who shall knowingly swear falsely on such statement shall be subject to prosecution for perjury. Should the earning capacity of such beneficiary be further altered, the chief may further alter his disability retirement allowance as indicated above. The failure of any officer to file the required statement of earnings shall be cause for cancellation of retirement benefits.

(2) Officers on disability status shall receive one-half of their compensation at the existing wage, during the time the disability continues in effect, less any compensation received through the department of labor and industries. They shall be subject to mental or physical examination at any state institution or otherwise under the direction of the chief of the patrol at any time during such relief from duty to ascertain whether or not they are able to resume active duty.



Passed the Senate February 12, 1998.  
Passed the House March 3, 1998.  
Approved by the Governor March 27, 1998.  
Filed in Office of Secretary of State March 27, 1998.

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## CHAPTER 195

[Substitute Senate Bill 6439]

### DESIGN-BUILD PROCEDURES FOR CERTAIN HIGHWAY PROJECTS

AN ACT Relating to construction of certain highway projects under a design-build procedure; creating new sections; and providing a contingent expiration date.

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

**NEW SECTION.** Sec. 1. The legislature finds and declares that a contracting procedure that facilitates construction of transportation facilities in a more timely manner may occasionally be needed to ensure that construction can proceed simultaneously with the design of the facility.

**NEW SECTION.** Sec. 2. The department of transportation shall develop, by January 1, 1999, a process for awarding competitively bid highway construction contracts for projects over ten million dollars that may be constructed using a design-build procedure. As used in this section, "design-build procedure" means a method of contracting under which the department of transportation contracts with another party for such party to both design and build the structures, facilities, and other items specified in the contract.

The process developed by the department shall, at a minimum, include the scope of services required under the design-build procedure, contractor prequalification requirements, criteria for evaluating technical information and project costs, contractor selection criteria, and an issue resolution procedure. If a request for proposal will be used, the requirements of RCW 39.10.050 (4), (5), and (6) apply.

**NEW SECTION.** Sec. 3. RCW 39.10.080, 39.10.090, and 39.10.100 and the notice requirements of RCW 39.10.030 (2), (3), and (4) apply to this act.

**NEW SECTION.** Sec. 4. The department may use the design-build procedure for public works projects over ten million dollars where:

(1) The construction activities are highly specialized and a design-build approach, as defined in section 2 of this act, is critical in developing the construction methodology; or

(2) The projects selected provide opportunity for greater innovation and efficiencies between the designer and the builder; or

(3) Significant savings in project delivery time would be realized.

**NEW SECTION.** Sec. 5. Sureties are not responsible for damages, including corrective work, attributable to the design aspect of a design-build project.

**NEW SECTION.** Sec. 6. A demonstration program consisting of two projects must be implemented using the design-build method of contracting, as

prescribed under a process developed by the department of transportation under section 2 of this act. The department shall select projects valued over ten million dollars for the demonstration program.

The department shall present progress reports on the demonstration projects to the legislative transportation committee and the alternative public works oversight committee during the course of the performance of the demonstration projects. The department shall present a final detailed report to the legislative transportation committee within one year of completion of the demonstration projects. The report must detail the advantages and disadvantages of the design-build construction process and make recommendations for possible changes in law, and in how the process may be used for future department projects.

**NEW SECTION. Sec. 7.** This act expires April 30, 2001, unless extended by the legislature.

Passed the Senate March 9, 1998.

Passed the House March 3, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

## CHAPTER 196

[Senate Bill 6441]

### ENVIRONMENTAL PROTECTION CHANGE ORDERS IN PUBLIC PROJECTS—REVISIONS

AN ACT Relating to environmental protection change orders in public projects; and amending RCW 39.04.120.

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

**Sec. 1.** RCW 39.04.120 and 1973 1st ex.s. c 62 s 1 are each amended to read as follows:

~~((All invitations for bid proposals for public construction projects issued by the state of Washington, its authorities or agencies, or any political subdivision of the state, shall set forth in the contract documents to the extent they are reasonably obtainable by the public awarding authority those provisions of federal, state and local statutes, ordinances and regulations dealing with the prevention of environmental pollution and the preservation of public natural resources that affect or are affected by the projects:))~~ If the successful bidder must undertake additional work for public construction projects issued by the state of Washington, its authorities or agencies, or a political subdivision of the state due to the enactment of new environmental protection requirements or the amendment of existing environmental protection statutes, ordinances, or rules ~~((or regulations))~~ occurring after the submission of the successful bid, the awarding agency shall issue a change order setting forth the additional work that must be undertaken, which shall not invalidate the contract. The cost of such a change order to the awarding agency shall be determined in accordance with the provisions of the contract for change orders ~~((or force accounts))~~ or, if no such

provision is set forth in the contract, then the cost to the awarding agency shall be the contractor's costs for wages, labor costs other than wages, wage taxes, materials, equipment rentals, insurance, and subcontracts attributable to the additional activity plus a reasonable sum for overhead and profit(~~(: PROVIDED; That such)),~~ However, the additional costs to undertake work not specified in the contract documents shall not be approved unless written authorization is given the successful bidder prior to his undertaking such additional activity. In the event of a dispute between the awarding agency and the (~~(successful bidder; arbitration))~~ contractor, dispute resolution procedures may be commenced under the applicable terms of the construction contract, or, if the contract contains no such provision for (~~(arbitration))~~ dispute resolution, the then obtaining rules of the American arbitration association.

Passed the Senate February 13, 1998.

Passed the House March 3, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

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## CHAPTER 197

[Substitute Senate Bill 6535]

### ELECTRONIC TRANSFER OF CRIMINAL JUSTICE INFORMATION

AN ACT Relating to electronic transfer of information; and amending RCW 10.98.090.

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

**Sec. 1.** RCW 10.98.090 and 1985 c 201 s 4 are each amended to read as follows:

(1) In all cases where an arrest and fingerprint form is transmitted to the section, the originating agency shall code the form indicating which agency is initially responsible for reporting the disposition to the section. Coding shall include but not be limited to the prosecuting attorney, superior court, district court, municipal court, or the originating agency.

(2) In the case of a superior court or felony disposition, the county clerk or prosecuting attorney shall promptly transmit the completed disposition ((form)) information to the section. In a county where the judicial information system or other secure method of electronic transfer of information has been implemented between the court and the section, the county clerk shall electronically provide the disposition information. In the case of a felony conviction in a county without the judicial information system or other secure method of electronic transfer of information between the court and the section, the prosecuting attorney shall attach a copy of the judgment and sentence form to the disposition form transmitted to the section. In the case of a lower court disposition, the district or municipal court administrator shall either promptly transmit the completed disposition form or, in a county where the judicial information system or other secure method of electronic transfer of information has been implemented between the court and the section, electronically provide the disposition

information to the section. For all other dispositions the originating agency shall promptly transmit the completed disposition form to the section.

~~((3) Until October 1, 1985, the prosecuting attorney, upon a felony conviction, shall also forward a copy of the judgment and sentence form to the department:))~~

Passed the Senate February 13, 1998.

Passed the House March 3, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

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## CHAPTER 198

[Substitute Senate Bill 6603]

### VESSEL REGISTRATION—EXEMPTIONS

AN ACT Relating to exceptions from vessel registration; amending RCW 88.02.030; and declaring an emergency.

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

**Sec. 1.** RCW 88.02.030 and 1997 c 83 s 1 are each amended to read as follows:

Vessel registration is required under this chapter except for the following:

(1) Military or public vessels of the United States, except recreational-type public vessels;

(2) Vessels owned by a state or subdivision thereof, used principally for governmental purposes and clearly identifiable as such;

(3) Vessels either (a) registered or numbered under the laws of a country other than the United States; or (b) having a valid United States customs service cruising license issued pursuant to 19 C.F.R. Sec. 4.94, On or before the sixty-first day of use in the state, any vessel in the state under this subsection shall obtain an identification document from the department of licensing, its agents, or subagents indicating when the vessel first came into the state. At the time of any issuance of an identification document, a twenty-five dollar identification document fee shall be paid by the vessel owner to the department of licensing for the cost of providing the identification document by the department of licensing. Any moneys remaining from the fee after payment of costs shall be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.045. The department of licensing shall adopt rules to implement its duties under this subsection, including issuing and displaying the identification document and collecting the twenty-five dollar fee;

(4) Vessels that have been issued a valid number under federal law or by an approved issuing authority of the state of principal operation. However, a vessel that is validly registered in another state but that is removed to this state for principal use is subject to registration under this chapter. The issuing authority for this state shall recognize the validity of the numbers previously issued for a period of sixty days after arrival in this state;

(5) Vessels owned by a nonresident if the vessel is located upon the waters of this state exclusively for repairs, alteration, or reconstruction, or any testing related to the repair, alteration, or reconstruction conducted in this state if an employee of the repair, alteration, or construction facility is on board the vessel during any testing: PROVIDED, That any vessel owned by a nonresident is located upon the waters of this state exclusively for repairs, alteration, reconstruction, or testing for a period longer than sixty days, that the nonresident shall file an affidavit with the department of revenue verifying the vessel is located upon the waters of this state for repair, alteration, reconstruction, or testing and shall continue to file such affidavit every sixty days thereafter, while the vessel is located upon the waters of this state exclusively for repairs, alteration, reconstruction, or testing;

(6) Vessels equipped with propulsion machinery of less than ten horsepower that:

(a) Are owned by the owner of a vessel for which a valid vessel number has been issued;

(b) Display the number of that numbered vessel followed by the suffix "1" in the manner prescribed by the department; and

(c) Are used as a tender for direct transportation between that vessel and the shore and for no other purpose;

(7) Vessels under sixteen feet in overall length which have no propulsion machinery of any type or which are not used on waters subject to the jurisdiction of the United States or on the high seas beyond the territorial seas for vessels owned in the United States and are powered by propulsion machinery of ten or less horsepower;

(8) Vessels with no propulsion machinery of any type for which the primary mode of propulsion is human power;

(9) Vessels primarily engaged in commerce which have or are required to have a valid marine document as a vessel of the United States. Commercial vessels which the department of revenue determines have the external appearance of vessels which would otherwise be required to register under this chapter, must display decals issued annually by the department of revenue that indicate the vessel's exempt status;

(10) Vessels primarily engaged in commerce which are owned by a resident of a country other than the United States; and

(11) On and after January 1, 1998, vessels owned by a nonresident individual brought into the state for his or her use or enjoyment while temporarily within the state for not more than six months in any continuous twelve-month period, unless the vessel is used in conducting a nontransitory business activity within the state. However, the vessel must ~~((a) be registered or numbered under the laws of a country other than the United States, (b) have a valid United States customs service cruising license issued under 19 C.F.R. Sec. 4.94, or (c))~~ have been issued a valid number under federal law or by an approved issuing authority of the state of principal operation. On or before the sixty-first day of use in the state,

any vessel temporarily in the state under this subsection shall obtain an identification document from the department of licensing, its agents, or subagents indicating when the vessel first came into the state. An identification document shall be valid for a period of two months. At the time of any issuance of an identification document, a twenty-five dollar identification document fee shall be paid by the vessel owner to the department of licensing for the cost of providing the identification document by the department of licensing. Any moneys remaining from the fee after payment of costs shall be allocated to counties by the state treasurer for approved hoating safety programs under RCW 88.02.045. The department of licensing shall adopt rules to implement its duties under this subsection, including issuing and displaying the identification document and collecting the twenty-five dollar fee.

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

Passed the Senate March 9, 1998.

Passed the House March 6, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

## CHAPTER 199

[Engrossed Senate Bill 6628]

### TRANSPORTATION PLANNING—COMPONENTS—STUDY OF WASHINGTON-BUILT LIGHT RAIL TRAIN SETS AND COMPONENTS

AN ACT Relating to the state-owned facilities component of the state-wide transportation plan and intercity passenger rail; and amending RCW 47.06.040, 47.06.050, and 47.06.090; and adding a new chapter to 81.104 RCW.

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

**Sec. 1.** RCW 47.06.040 and 1994 c 258 s 5 are each amended to read as follows:

The department shall develop a state-wide multimodal transportation plan under RCW 47.01.071(3) and in conformance with federal requirements, to ensure the continued mobility of people and goods within regions and across the state in a safe, cost-effective manner. The state-wide multimodal transportation plan shall consist of:

(1) A state-owned facilities component, which shall guide state investment for state highways including bicycle and pedestrian facilities, and state ferries; and

(2) A state-interest component, which shall define the state interest in aviation, marine ports and navigation, freight rail, intercity passenger rail, bicycle transportation and pedestrian walkways, and public transportation, and recommend actions in coordination with appropriate public and private

transportation providers to ensure that the state interest in these transportation modes is met.

The plans developed under each component must be consistent with the state transportation policy plan and with each other, reflect public involvement, be consistent with regional transportation planning, high-capacity transportation planning, and local comprehensive plans prepared under chapter 36.70A RCW, and include analysis of intermodal connections and choices. A primary emphasis for these plans shall be the relief of congestion, the preservation of existing investments, the improvement of traveler safety, the efficient movement of freight and goods, and the improvement and integration of all transportation modes to create a seamless intermodal transportation system for people and goods.

In the development of the state-wide multimodal transportation plan, the department shall identify and document potential affected environmental resources, including, but not limited to, wetlands, storm water runoff, flooding, air quality, fish passage, and wildlife habitat. The department shall conduct its environmental identification and documentation in coordination with all relevant environmental regulatory authorities, including, but not limited to, local governments. The department shall give the relevant environmental regulatory authorities an opportunity to review the department's environmental plans. The relevant environmental regulatory authorities shall provide comments on the department's environmental plans in a timely manner. Environmental identification and documentation as provided for in RCW 47.01.300 and this section is not intended to create a private right of action or require an environmental impact statement as provided in chapter 43.21C RCW.

*\*Sec. 2. RCW 47.06.050 and 1993 c 446 s 5 are each amended to read as follows:*

*The state-owned facilities component of the state-wide transportation plan shall identify the most cost-effective combination of highway, ferry, passenger rail, and high-capacity transportation improvements that maximizes the efficient movement of people, freight, and goods within state transportation corridors and will consist of:*

*(1) The state highway system plan, which identifies program and financing needs and recommends specific and financially realistic improvements to preserve the structural integrity of the state highway system, ensure acceptable operating conditions, and provide for enhanced access to scenic, recreational, and cultural resources. The state highway system plan shall contain the following elements:*

*(a) A system preservation element, which shall establish structural preservation objectives for the state highway system including bridges, identify current and future structural deficiencies based upon analysis of current conditions and projected future deterioration, and recommend program funding levels and specific actions necessary to preserve the structural integrity of the state highway system consistent with adopted objectives. This element shall*

*serve as the basis for the preservation component of the six-year highway program and the two-year biennial budget request to the legislature;*

*(b) A capacity and operational improvement element, which shall establish operational objectives, including safety considerations, for moving people and goods on the state highway system, identify current and future capacity, operational, and safety deficiencies, and recommend program funding levels and specific improvements and strategies necessary to achieve the operational objectives. In developing capacity and operational improvement plans the department shall first assess strategies to enhance the operational efficiency of the existing system before recommending system expansion. Congestion relief must be a primary emphasis of the capacity and operational improvement element. Strategies to enhance the operational efficiencies include but are not limited to access management, transportation system management, demand management, and high-occupancy vehicle facilities. The capacity and operational improvement element must conform to the state implementation plan for air quality and be consistent with regional transportation plans adopted under chapter 47.80 RCW, and shall serve as the basis for the capacity and operational improvement portions of the six-year highway program and the two-year biennial budget request to the legislature;*

*(c) A scenic and recreational highways element, which shall identify and recommend designation of scenic and recreational highways, provide for enhanced access to scenic, recreational, and cultural resources associated with designated routes, and recommend a variety of management strategies to protect, preserve, and enhance these resources. The department, affected counties, cities, and towns, regional transportation planning organizations, and other state or federal agencies shall jointly develop this element;*

*(d) A paths and trails element, which shall identify the needs of nonmotorized transportation modes on the state transportation systems and provide the basis for the investment of state transportation funds in paths and trails, including funding provided under chapter 47.30 RCW.*

*(2) The state ferry system plan, which shall guide capital and operating investments in the state ferry system. The plan shall establish service objectives for state ferry routes, forecast travel demand for the various markets served in the system, and develop strategies for ferry system investment that consider regional and state-wide vehicle and passenger needs, support local land use plans, and assure that ferry services are fully integrated with other transportation services. The plan shall assess the role of private ferries operating under the authority of the utilities and transportation commission and shall coordinate ferry system capital and operational plans with these private operations. The ferry system plan must be consistent with the regional transportation plans for areas served by the state ferry system, and shall be developed in conjunction with the ferry advisory committees.*

*\*Sec. 2 was vetoed. See message at end of chapter.*



*\*Sec. 3. RCW 47.06.090 and 1993 c 446 s 9 are each amended to read as follows:*

*The state-interest component of the state-wide multimodal transportation plan shall include an intercity passenger rail plan, which shall analyze existing intercity passenger rail service and recommend improvements to that service under the state passenger rail service program including depot improvements, potential service extensions, and ways to achieve higher train speeds. The plan must include:*

*(1) A service preservation element that outlines the trackage, depots, and train investments needed to maintain established service levels; and*

*(2) A service improvement element that establishes service improvement objectives and outlines the trackage, depot, and train investments needed to meet improvement service objectives.*

\*Sec. 3 was vetoed. See message at end of chapter.

**NEW SECTION.** Sec. 4. A new section is added to chapter 81.104 RCW to read as follows:

Any regional transit authority imposing taxes under this chapter shall consult with the department of community, trade, and economic development to explore the potential for developing contracting methods and procedures that encourage the establishment of a manufacturing base in the state of Washington for the purpose of constructing and assembling commuter and light rail train sets and components. The regional transit authority shall report its findings and recommendations to the legislative transportation committee by January 1, 1999.

Passed the Senate March 12, 1998.

Passed the House March 11, 1998.

Approved by the Governor March 27, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 27, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 2 and 3, Engrossed Senate Bill No. 6628 entitled:

"AN ACT Relating to the state-owned facilities component of the state-wide transportation plan and intercity passenger rail;"

Section 2 of ESB 6628 would require an in-depth modal trade-off analysis. Such an analysis is the type of research that we should ultimately seek in our state transportation plan. However, section 2 calls for a cutting-edge type of analysis. There is not sufficient research available to support that type of analysis at this time, and it is unrealistic to expect the Department of Transportation to accomplish such extensive work without any funding.

Section 3 of ESB 6628 would add additional requirements to the intercity passenger rail plan. While it would certainly be worthwhile for decision makers to have such information, the examination should be more modally comprehensive. That is, similar data should be gleaned for all modes to allow a more fair comparison. And again, without funding from the Legislature, the Department of Transportation cannot conduct such major work without being forced to neglect existing statutory requirements.

For these reasons, I have vetoed sections 2 and 3 of Engrossed Senate Bill No. 6628.

With the exception of sections 2 and 3, Engrossed Senate Bill No. 6628 is approved."

**CHAPTER 200**

[Senate Bill 6728]

**HOP COMMODITY COMMISSIONS OR BOARDS ACTIVITIES--  
BUSINESS AND OCCUPATION TAX EXEMPTIONS**

AN ACT Relating to the taxation of activities conducted for hop commodity commissions or boards; and adding a new section to chapter 82.04 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 82.04 RCW to read as follows:

This chapter does not apply to any nonprofit organization in respect to gross income derived from business activities for a hop commodity commission or hop commodity board created by state statute or created under chapter 15.65 or 15.66 RCW if: (1) The activity is approved by a referendum conducted by the commission or board; (2) the person is specified in information distributed by the commission or board for the referendum as a person who is to conduct the activity; and (3) the referendum is conducted in the manner prescribed by the statutes governing the commission or board for approving assessments or expenditures, or otherwise authorizing or approving activities of the commission or board. As used in this section, "nonprofit organization" means an organization that is exempt from federal income tax under 26 U.S.C. 501(c)(5).

Passed the Senate February 16, 1998.

Passed the House March 6, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

**CHAPTER 201**

[Substitute Senate Bill 6731]

**LARGER AIRPORTS BELONGING TO OUT-OF-STATE MUNICIPAL CORPORATIONS--  
REMOVAL OF PROPERTY TAX EXEMPTION**

AN ACT Relating to airport property in this state belonging to municipal corporations in adjoining states; and amending RCW 84.36.130.

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

**Sec. 1.** RCW 84.36.130 and 1961 c 15 s 84.36.130 are each amended to read as follows:

All property, whether real or personal, belonging exclusively to any municipal corporation in an adjoining state legally empowered by the laws of such adjoining state to acquire and hold property within this state, and which property is used primarily for airport purposes and other facilities for landing, terminals, housing, repair and care of dirigibles, airplanes and seaplanes for the aerial transportation of persons, property or mail, or in the armed forces of the United States, and upon which property there is expended funds by the federal, county or state agencies, or upon which funds are allocated by the federal

government agencies on national defense projects, is hereby exempted from ad valorem taxation. The exemption in this section applies only to airports five hundred acres or less in size.

Passed the Senate February 16, 1998.

Passed the House March 6, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

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## CHAPTER 202

[Substitute Senate Bill 6737]

### RESIDENTIAL HOUSING OCCUPIED BY LOW-INCOME DEVELOPMENTALLY DISABLED PERSONS—PROPERTY TAX EXEMPTIONS

AN ACT Relating to the property taxation of residential housing occupied by low-income developmentally disabled persons; reenacting and amending RCW 84.36.800, 84.36.805, and 84.36.810; and adding a new section to chapter 84.36 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 84.36 RCW to read as follows:

(1) All real and personal property owned or leased by a nonprofit organization, corporation, or association to provide housing for eligible persons with developmental disabilities is exempt from property taxation.

(a) To qualify for this exemption, the nonprofit organization, corporation, or association must be qualified for exemption under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)). It must also have been organized for charitable purposes to create and preserve long-term affordable housing for low-income developmentally disabled persons.

(b) The housing must be occupied by eligible persons who have a low income.

(2) As used in this section:

(a) "Developmental disability" means the same as defined in RCW 71A.10.020;

(b) "Eligible person" means the same as defined in RCW 71A.10.020; and

(c) "Low income" means the adjusted gross income of the resident is at eighty percent or less of the median income adjusted for family size, as most recently determined by the federal department of housing and urban development for the county in which the housing is located and in effect as of January 1st of the assessment year for which the exemption is sought. "Adjusted gross income" is as defined in the federal internal revenue code of 1986, as it exists on the effective date of this act or such subsequent date as the director may provide by rule consistent with the purpose of this section.

(3) To be exempt under this section, the property must be used exclusively for the purposes for which the exemption is granted, except as provided in RCW 84.36.805.

(4) If the real or personal property for which exemption is sought is leased, the benefit of the exemption must inure to the nonprofit organization, corporation, or association leasing the property to provide the housing for developmentally disabled persons.

**Sec. 2.** RCW 84.36.800 and 1997 c 156 s 7 and 1997 c 143 s 2 are each reenacted and amended to read as follows:

As used in ((~~RCW 84.36.020, 84.36.030, 84.36.037, 84.36.040, 84.36.041, 84.36.050, 84.36.060, 84.36.550, 84.36.046, and 84.36.800 through 84.36.865~~)) this chapter:

(1) "Church purposes" means the use of real and personal property owned by a nonprofit religious organization for religious worship or related administrative, educational, eleemosynary, and social activities. This definition is to be broadly construed;

(2) "Convent" means a house or set of buildings occupied by a community of clergy or nuns devoted to religious life under a superior;

(3) "Hospital" means any portion of a hospital building, or other buildings in connection therewith, used as a residence for persons engaged or employed in the operation of a hospital, or operated as a portion of the hospital unit;

(4) "Nonprofit" means an organization, association or corporation no part of the income of which is paid directly or indirectly to its members, stockholders, officers, directors or trustees except in the form of services rendered by the organization, association, or corporation in accordance with its purposes and bylaws and the salary or compensation paid to officers of such organization, association or corporation is for actual services rendered and compares to the salary or compensation of like positions within the public services of the state;

(5) "Parsonage" means a residence occupied by a member of the clergy who has been designated for a particular congregation and who holds regular services therefor.

**Sec. 3.** RCW 84.36.805 and 1997 c 156 s 8 and 1997 c 143 s 3 are each reenacted and amended to read as follows:

In order to be exempt pursuant to RCW 84.36.030, 84.36.035, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.045, 84.36.046, 84.36.047, 84.36.050, 84.36.060, 84.36.350, 84.36.480, 84.36.550, and ((~~84.36.046~~)) section 1 of this act, the nonprofit organizations, associations or corporations shall satisfy the following conditions:

(1) The property is used exclusively for the actual operation of the activity for which exemption is granted, unless otherwise provided, and does not exceed an amount reasonably necessary for that purpose, except:

(a) The loan or rental of the property does not subject the property to tax if:

(i) The rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and

(ii) Except for the exemptions under RCW 84.36.030(4) and 84.36.037, the property would be exempt from tax if owned by the organization to which it is loaned or rented;

(b) The use of the property for fund-raising activities does not subject the property to tax if the fund-raising activities are consistent with the purposes for which the exemption is granted;

(2) The property is irrevocably dedicated to the purpose for which exemption has been granted, and on the liquidation, dissolution, or abandonment by said organization, association, or corporation, said property will not inure directly or indirectly to the benefit of any shareholder or individual, except a nonprofit organization, association, or corporation which too would be entitled to property tax exemption. This property need not be irrevocably dedicated if it is leased or rented to those qualified for exemption pursuant to RCW 84.36.035, 84.36.040, 84.36.041, 84.36.043, ~~((or))~~ 84.36.046, or section 1 of this act or those qualified for exemption as an association engaged in the production or performance of musical, dance, artistic, dramatic, or literary works pursuant to RCW 84.36.060, but only if under the terms of the lease or rental agreement the nonprofit organization, association, or corporation receives the benefit of the exemption;

(3) The facilities and services are available to all regardless of race, color, national origin or ancestry;

(4) The organization, association, or corporation is duly licensed or certified where such licensing or certification is required by law or regulation;

(5) Property sold to organizations, associations, or corporations with an option to be repurchased by the seller shall not qualify for exempt status;

(6) The director of the department of revenue shall have access to its books in order to determine whether such organization, association, or corporation is exempt from taxes within the intent of RCW 84.36.030, 84.36.035, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.045, 84.36.046, 84.36.047, 84.36.050, 84.36.060, 84.36.350, 84.36.480, and ~~((84.36.046))~~ section 1 of this act.

Sec. 4. RCW 84.36.810 and 1997 c 156 s 9 and 1997 c 143 s 4 are each reenacted and amended to read as follows:

(1) Upon cessation of a use under which an exemption has been granted pursuant to RCW 84.36.030, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.046, 84.36.050, 84.36.060, 84.36.550, and ~~((84.36.046))~~ and section 1 of this act, the county treasurer shall collect all taxes which would have been paid had the property not been exempt during the three years preceding, or the life of such exemption, if such be less, together with the interest at the same rate and computed in the same way as that upon delinquent property taxes. Where the property has been granted an exemption for more than ten years, taxes and interest shall not be assessed under this section.

(2) Subsection (1) of this section applies only when ownership of the property is transferred or when fifty-one percent or more of the area of the property has lost its exempt status. The additional tax under subsection (1) of this section shall not be imposed if the cessation of use resulted solely from:

(a) Transfer to a nonprofit organization, association, or corporation for a use which also qualifies and is granted exemption under the provisions of chapter 84.36 RCW;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) Official action by an agency of the state of Washington or by the county or city within which the property is located which disallows the present use of such property;

(d) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the organization, association, or corporation changing the use of such property;

(e) Relocation of the activity and use of another location or site except for undeveloped properties of camp facilities exempted under RCW 84.36.030;

(f) Cancellation of a lease on property that had been exempt under RCW 84.36.040, 84.36.041, 84.36.043, 84.36.046, 84.36.060, or (~~84.36.046~~) section 1 of this act;

(g) A change in the exempt portion of a home for the aging under RCW 84.36.041(3), as long as some portion of the home remains exempt;

(h) The conversion of a full exemption of a home for the aging to a partial exemption or taxable status or the conversion of a partial exemption to taxable status under RCW 84.36.041(8).

Passed the Senate February 16, 1998.

Passed the House March 6, 1998.

Approved by the Governor March 27, 1998.

Filed in Office of Secretary of State March 27, 1998.

## CHAPTER 203

[Engrossed Substitute House Bill 1221]

### IMPOUNDMENT AND FORFEITURES OF VEHICLES OPERATED BY PERSONS WITH SUSPENDED OR REVOKED DRIVER'S LICENSES

AN ACT Relating to the impoundment and forfeiture of vehicles being operated by persons who have a suspended or revoked driver's license; amending RCW 46.55.105, 46.55.110, 46.55.113, 46.55.120, 46.55.130, 46.55.010, 46.55.100, 46.12.095, and 46.12.101; adding a new section to chapter 46.55 RCW; adding a new section to chapter 46.12 RCW; creating new sections; and repealing RCW 46.20.344.

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

NEW SECTION. **Sec. 1.** The legislature finds that the license to drive a motor vehicle on the public highways is suspended or revoked in order to protect public safety following a driver's failure to comply with the laws of this state. Over six hundred persons are killed in traffic accidents in Washington annually, and more than eighty-four thousand persons are injured. It is estimated that of the three million four hundred thousand drivers' licenses issued to citizens of Washington, more than two hundred sixty thousand are suspended or revoked at

any given time. Suspended drivers are more likely to be involved in causing traffic accidents, including fatal accidents, than properly licensed drivers, and pose a serious threat to the lives and property of Washington residents. Statistics show that suspended drivers are three times more likely to kill or seriously injure others in the commission of traffic felony offenses than are validly licensed drivers. In addition to not having a driver's license, most such drivers also lack required liability insurance, increasing the financial burden upon other citizens through uninsured losses and higher insurance costs for validly licensed drivers. Because of the threat posed by suspended drivers, all registered owners of motor vehicles in Washington have a duty to not allow their vehicles to be driven by a suspended driver.

Despite the existence of criminal penalties for driving with a suspended or revoked license, an estimated seventy-five percent of these drivers continue to drive anyway. Existing sanctions are not sufficient to deter or prevent persons with a suspended or revoked license from driving. It is common for suspended drivers to resume driving immediately after being stopped, cited, and released by a police officer and to continue to drive while a criminal prosecution for suspended driving is pending. More than half of all suspended drivers charged with the crime of driving while suspended or revoked fail to appear for court hearings. Vehicle impoundment will provide an immediate consequence which will increase deterrence and reduce unlawful driving by preventing a suspended driver access to that vehicle. Vehicle impoundment will also provide an appropriate measure of accountability for registered owners who permit suspended drivers to drive their vehicles. Impoundment of vehicles driven by suspended drivers has been shown to reduce future driving while suspended or revoked offenses for up to two years afterwards, and the recidivism rate for drivers whose cars were not impounded was one hundred percent higher than for drivers whose cars were impounded. In order to adequately protect public safety and to enforce the state's driver licensing laws, it is necessary to authorize the impoundment of any vehicle when it is found to be operated by a driver with a suspended or revoked license in violation of RCW 46.20.342 and 46.20.420. The impoundment of a vehicle operated in violation of RCW 46.20.342 or 46.20.420 is intended to be a civil in rem action against the vehicle in order to remove it from the public highways and reduce the risk posed to traffic safety by a vehicle accessible to a driver who is reasonably believed to have violated these laws.

**Sec. 2.** RCW 46.55.105 and 1995 c 219 s 4 are each amended to read as follows:

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

(2) If an unauthorized vehicle is found abandoned under subsection (1) of this section and removed at the direction of law enforcement, the last registered owner of record is guilty of a traffic infraction, unless the vehicle is redeemed as

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

(3) A vehicle theft report filed with a law enforcement agency relieves the last registered owner of liability under subsection (2) of this section for failure to redeem the vehicle. However, the last registered owner remains liable for the costs incurred in removing, storing, and disposing of the abandoned vehicle under subsection (1) of this section. Nothing in this section limits in any way the registered owner's rights in a civil action or as restitution in a criminal action against a person responsible for the theft of the vehicle.

(4) Properly filing a report of sale or transfer regarding the vehicle involved in accordance with RCW 46.12.101(1) (~~or a vehicle theft report filed with a law enforcement agency~~) relieves the last registered owner of liability under subsections (1) and (2) of this section. If the date of sale as indicated on the report of sale is on or before the date of impoundment, the buyer identified on the latest properly filed report of sale with the department is assumed liable for the costs incurred in removing, storing, and disposing of the abandoned vehicle, less amounts realized at auction. If the date of sale is after the date of impoundment, the previous registered owner is assumed to be liable for such costs. A licensed vehicle dealer is not liable under subsections (1) and (2) of this section if the dealer, as transferee or assignee of the last registered owner of the vehicle involved, has complied with the requirements of RCW 46.70.122 upon selling or otherwise disposing of the vehicle, or if the dealer has timely filed a transitional ownership record or report of sale under section 12 of this act. In that case the person to whom the licensed vehicle dealer has sold or transferred the vehicle is assumed liable for the costs incurred in removing, storing, and disposing of the abandoned vehicle, less amounts realized at auction.

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

~~((5))~~ (6) A notice of infraction for a violation of this section may be filed with a court of limited jurisdiction organized under Title 3, 35, or 35A RCW, or with a violations bureau subject to the court's jurisdiction.

**Sec. 3.** RCW 46.55.110 and 1995 c 360 s 6 are each amended to read as follows:

(1) When an unauthorized vehicle is impounded, the impounding towing operator shall notify the legal and registered owners of the impoundment of the unauthorized vehicle and the owners of any other items of personal property registered or titled with the department. The notification shall be sent by first-



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

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

(3) If the date on which a notice required by subsection (2) of this section is to be mailed falls upon a Saturday, Sunday, or a postal holiday, the notice may be mailed on the next day that is neither a Saturday, Sunday, nor a postal holiday.

(4) No notices need be sent to the legal or registered owners of an impounded vehicle or other item of personal property registered or titled with the department, if the vehicle or personal property has been redeemed.

**Sec. 4.** RCW 46.55.113 and 1997 c 66 s 7 are each amended to read as follows:

Whenever the driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504 or of RCW 46.20.342 or 46.20.420, the ~~((arresting officer may take custody of the vehicle and provide for its prompt removal to a place of safety))~~ vehicle is subject to impoundment, pursuant to applicable local ordinance or state agency rule at the direction of a law enforcement officer. In addition, a police officer may take custody of a vehicle and provide for its prompt removal to a place of safety under any of the following circumstances:

(1) Whenever a police officer finds a vehicle standing upon the roadway in violation of any of the provisions of RCW 46.61.560, the officer may provide for the removal of the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway;

(2) Whenever a police officer finds a vehicle unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety;

(3) Whenever a police officer finds an unattended vehicle at the scene of an accident or when the driver of a vehicle involved in an accident is physically or mentally incapable of deciding upon steps to be taken to protect his or her property;

(4) Whenever the driver of a vehicle is arrested and taken into custody by a police officer;

(5) Whenever a police officer discovers a vehicle that the officer determines to be a stolen vehicle;

(6) Whenever a vehicle without a special license plate, card, or decal indicating that the vehicle is being used to transport a disabled person under RCW 46.16.381 is parked in a stall or space clearly and conspicuously marked under RCW 46.61.581 which space is provided on private property without charge or on public property;

(7) Upon determining that a person is operating a motor vehicle without a valid driver's license in violation of RCW 46.20.005 or with a license that has been expired for ninety days or more (~~(7) or with a suspended or revoked license in violation of RCW 46.20.342 or 46.20.420~~).

Nothing in this section may derogate from the powers of police officers under the common law. For the purposes of this section, a place of safety may include the business location of a registered tow truck operator.

Sec. 5. RCW 46.55.120 and 1996 c 89 s 2 are each amended to read as follows:

(1) Vehicles or other items of personal property registered or titled with the department that are impounded by registered tow truck operators pursuant to RCW 46.55.080, 46.55.085, or 46.55.113 may be redeemed only under the following circumstances:

(a) Only the legal owner, the registered owner, a person authorized in writing by the registered owner or the vehicle's insurer, a person who is determined and verified by the operator to have the permission of the registered owner of the vehicle or other item of personal property registered or titled with the department, or one who has purchased a vehicle or item of personal property registered or titled with the department from the registered owner who produces proof of ownership or written authorization and signs a receipt therefor, may redeem an impounded vehicle or items of personal property registered or titled with the department. In addition, a vehicle impounded because the operator is in violation of RCW 46.20.342(1)(c) shall not be released until a person eligible to redeem it under this subsection (1)(a) satisfies the requirements of (b) of this subsection, including paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency. If the department's records show that the operator has been convicted of a violation of RCW 46.20.342 or a similar local ordinance within the past five years, the vehicle may be held for up to thirty days at the written direction of the agency ordering the vehicle impounded. A vehicle impounded because the operator is arrested for a violation of RCW 46.20.342 may be released only pursuant to a written order from the agency that ordered the vehicle impounded. An agency may issue a written order to release pursuant to a provision of an applicable state agency rule or local ordinance authorizing release on the basis of economic or personal hardship to the spouse of the operator, taking into consideration public safety factors, including the operator's criminal history and driving record.

If a vehicle is impounded because the operator is in violation of RCW 46.20.342(1) (a) or (b), the vehicle may be held for up to thirty days at the written direction of the agency ordering the vehicle impounded. However, if the

department's records show that the operator has been convicted of a violation of RCW 46.20.342(1) (a) or (b) or a similar local ordinance within the past five years, the vehicle may be held at the written direction of the agency ordering the vehicle impounded for up to sixty days, and for up to ninety days if the operator has two or more such prior offenses. If a vehicle is impounded because the operator is arrested for a violation of RCW 46.20.342, the vehicle may not be released until a person eligible to redeem it under this subsection (1)(a) satisfies the requirements of (b) of this subsection, including paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency.

(b) The vehicle or other item of personal property registered or titled with the department shall be released upon the presentation to any person having custody of the vehicle of commercially reasonable tender sufficient to cover the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing any such vehicle. In addition, if a vehicle is impounded because the operator was arrested for a violation of RCW 46.20.342 or 46.20.420 and was being operated by the registered owner when it was impounded, it must not be released to any person until the registered owner establishes with the agency that ordered the vehicle impounded that any penalties, fines, or forfeitures owed by him or her have been satisfied. Commercially reasonable tender shall include, without limitation, cash, major bank credit cards, or personal checks drawn on in-state banks if accompanied by two pieces of valid identification, one of which may be required by the operator to have a photograph. If the towing firm can determine through the customer's bank or a check verification service that the presented check would not be paid by the bank or guaranteed by the service, the towing firm may refuse to accept the check. Any person who stops payment on a personal check or credit card, or does not make restitution within ten days from the date a check becomes insufficient due to lack of funds, to a towing firm that has provided a service pursuant to this section or in any other manner defrauds the towing firm in connection with services rendered pursuant to this section shall be liable for damages in the amount of twice the towing and storage fees, plus costs and reasonable attorney's fees.

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

(b) Any person seeking to redeem an impounded vehicle under this section has a right to a hearing in the district or municipal court for the jurisdiction in which the vehicle was impounded to contest the validity of the impoundment or the amount of towing and storage charges. The district court has jurisdiction to

determine the issues involving all impoundments including those authorized by the state or its agents. The municipal court has jurisdiction to determine the issues involving impoundments authorized by agents of the municipality. Any request for a hearing shall be made in writing on the form provided for that purpose and must be received by the ((district)) appropriate court within ten days of the date the opportunity was provided for in subsection (2)(a) of this section. At the time of the filing of the hearing request, the petitioner shall pay to the court clerk a filing fee in the same amount required for the filing of a suit in district court. If the hearing request is not received by the ((district)) court within the ten-day period, the right to a hearing is waived and the registered owner is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the ((district)) court shall proceed to hear and determine the validity of the impoundment.

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

(b) At the hearing, the person or persons requesting the hearing may produce any relevant evidence to show that the impoundment, towing, or storage fees charged were not proper. The court may consider a written report made under oath by the officer who authorized the impoundment in lieu of the officer's personal appearance at the hearing.

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

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

(e) If the impoundment is determined to be in violation of this chapter, then the registered and legal owners of the vehicle or other item of personal property registered or titled with the department shall bear no impoundment, towing, or storage fees, and any security shall be returned or discharged as appropriate, and the person or agency who authorized the impoundment shall be liable for any towing, storage, or other impoundment fees permitted under this chapter. The court shall enter judgment in favor of the registered tow truck operator against the person or agency authorizing the impound for the impoundment, towing, and storage fees paid. In addition, the court shall enter judgment in favor of the registered and legal owners of the vehicle, or other item of personal property registered or titled with the department, for the amount of the filing fee required

by law for the impound hearing petition as well as reasonable damages for loss of the use of the vehicle during the time the same was impounded, for not less than fifty dollars per day, against the person or agency authorizing the impound. However, if an impoundment arising from an alleged violation of RCW 46.20.342 or 46.20.420 is determined to be in violation of this chapter, then the law enforcement officer directing the impoundment and the government employing the officer are not liable for damages if the officer relied in good faith and without gross negligence on the records of the department in ascertaining that the operator of the vehicle had a suspended or revoked driver's license. If any judgment entered is not paid within fifteen days of notice in writing of its entry, the court shall award reasonable attorneys' fees and costs against the defendant in any action to enforce the judgment. Notice of entry of judgment may be made by registered or certified mail, and proof of mailing may be made by affidavit of the party mailing the notice. Notice of the entry of the judgment shall read essentially as follows:

TO: . . . . .

YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the . . . . . Court located at . . . . . in the sum of \$. . . . ., in an action entitled . . . . ., Case No. . . . . YOU ARE FURTHER NOTIFIED that attorneys fees and costs will be awarded against you under RCW . . . if the judgment is not paid within 15 days of the date of this notice.

DATED this . . . . day of . . . . ., ((+9)) (year) . . .

Signature . . . . .

Typed name and address  
of party mailing notice

(4) Any impounded abandoned vehicle or item of personal property registered or titled with the department that is not redeemed within fifteen days of mailing of the notice of custody and sale as required by RCW 46.55.110(2) shall be sold at public auction in accordance with all the provisions and subject to all the conditions of RCW 46.55.130. A vehicle or item of personal property registered or titled with the department may be redeemed at any time before the start of the auction upon payment of the applicable towing and storage fees.

**Sec. 6.** RCW 46.55.130 and 1989 c 111 s 12 are each amended to read as follows:

(1) If, after the expiration of fifteen days from the date of mailing of notice of custody and sale required in RCW 46.55.110(2) to the registered and legal owners, the vehicle remains unclaimed and has not been listed as a stolen vehicle, then the registered tow truck operator having custody of the vehicle shall conduct a sale of the vehicle at public auction after having first published a notice of the date, place, and time of the auction in a newspaper of general circulation in the county in which the vehicle is located not less than three days and no more than ten days before the date of the auction. The notice shall contain a description of

the vehicle including the make, model, year, and license number and a notification that a three-hour public viewing period will be available before the auction. The auction shall be held during daylight hours of a normal business day.

(2) The following procedures are required in any public auction of such abandoned vehicles:

(a) The auction shall be held in such a manner that all persons present are given an equal time and opportunity to bid;

(b) All bidders must be present at the time of auction unless they have submitted to the registered tow truck operator, who may or may not choose to use the preauction bid method, a written bid on a specific vehicle. Written bids may be submitted up to five days before the auction and shall clearly state which vehicle is being bid upon, the amount of the bid, and who is submitting the bid;

(c) The open bid process, including all written bids, shall be used so that everyone knows the dollar value that must be exceeded;

(d) The highest two bids received shall be recorded in written form and shall include the name, address, and telephone number of each such bidder;

(e) In case the high bidder defaults, the next bidder has the right to purchase the vehicle for the amount of his or her bid;

(f) The successful bidder shall apply for title within fifteen days;

(g) The registered tow truck operator shall post a copy of the auction procedure at the bidding site. If the bidding site is different from the licensed office location, the operator shall post a clearly visible sign at the office location that describes in detail where the auction will be held. At the bidding site a copy of the newspaper advertisement that lists the vehicles for sale shall be posted;

(h) All surplus moneys derived from the auction after satisfaction of the registered tow truck operator's lien shall be remitted within thirty days to the department for deposit in the state motor vehicle fund. A report identifying the vehicles resulting in any surplus shall accompany the remitted funds. If the director subsequently receives a valid claim from the registered vehicle owner of record as determined by the department within one year from the date of the auction, the surplus moneys shall be remitted to such owner;

(i) If an operator receives no bid, or if the operator is the successful bidder at auction, the operator shall, within ~~((thirty))~~ forty-five days sell the vehicle to a licensed vehicle wrecker, hulk hauler, or scrap processor by use of the abandoned vehicle report-affidavit of sale, or the operator shall apply for title to the vehicle.

(3) In no case may an operator hold a vehicle for longer than ninety days without holding an auction on the vehicle, except for vehicles that are under a police or judicial hold.

(4)(a) In no case may the accumulation of storage charges exceed fifteen days from the date of receipt of the information by the operator from the department as provided by RCW 46.55.110(2).

(b) The failure of the registered tow truck operator to comply with the time limits provided in this chapter limits the accumulation of storage charges to five days except where delay is unavoidable. Providing incorrect or incomplete identifying information to the department in the abandoned vehicle report shall be considered a failure to comply with these time limits if correct information is available.

**\*NEW SECTION. Sec. 7. A new section is added to chapter 46.55 RCW to read as follows:**

**(1) This section applies to any impoundment of a vehicle when a driver is arrested for a violation of RCW 46.61.502 or 46.61.504, or of RCW 46.61.520 or 46.61.522 if committed while under the influence, as provided for in RCW 46.55.113 and 46.55.120.**

**(2) Any local government ordinance or state agency rule that provides for impoundment and redemption of vehicles may allow for alternative home impoundment of vehicles for all or part of the impoundment periods authorized in RCW 46.55.120. Home impoundment is an alternative to impoundment by a registered tow truck operator. Home impoundment consists of removing a vehicle to the registered owner's residence or other property, or to another place authorized by the ordinance or rule, and placing a boot or other device on the vehicle to render it immobile. The jurisdiction authorizing home impoundment may charge a reasonable rental fee for the use of the boot or other device during the period of home impoundment. The local government ordinance or state agency rule may provide that the owner or driver of the vehicle may elect whether to be subject to impoundment under RCW 46.55.120 or home impoundment under this section.**

**(3) Before any home impoundment is begun, the vehicle must be redeemed as provided for in RCW 46.55.120 if any impoundment has occurred under that section, and any towing fee incurred in getting the vehicle to the place of home impoundment must be paid.**

**(4) At the end of the period of home impoundment, the vehicle may be released only after all rental fees have been paid and only to a person who would qualify to redeem an impounded vehicle under RCW 46.55.120.**

**(5) A local ordinance or state agency rule may provide for impoundment by a registered tow truck operator if at the end of the period of home impoundment there is no qualified person to whom the vehicle may be released.**

**(6) A local ordinance or state agency rule may provide that if the boot or other device on a vehicle in home impoundment is tampered with, damaged, removed, or rendered inoperative, the vehicle may be released only upon payment of all applicable rental fees plus payment of a fee equal to the impoundment costs that would have been incurred had the vehicle been impounded under RCW 46.55.120 during the period of home impoundment.**

**\*Sec. 7 was vetoed. See message at end of chapter.**

**Sec. 8.** RCW 46.55.010 and 1994 c 176 s 1 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter:

(1) "Abandoned vehicle" means a vehicle that a registered tow truck operator has impounded and held in the operator's possession for (~~ninety-six~~) one hundred twenty consecutive hours.

(2) "Abandoned vehicle report" means the document prescribed by the state that the towing operator forwards to the department after a vehicle has become abandoned.

(3) "Impound" means to take and hold a vehicle in legal custody. There are two types of impounds—public and private.

(a) "Public impound" means that the vehicle has been impounded at the direction of a law enforcement officer or by a public official having jurisdiction over the public property upon which the vehicle was located.

(b) "Private impound" means that the vehicle has been impounded at the direction of a person having control or possession of the private property upon which the vehicle was located.

(4) "Junk vehicle" means a vehicle certified under RCW 46.55.230 as meeting at least three of the following requirements:

(a) Is three years old or older;

(b) Is extensively damaged, such damage including but not limited to any of the following: A broken window or windshield, or missing wheels, tires, motor, or transmission;

(c) Is apparently inoperable;

(d) Has an approximate fair market value equal only to the approximate value of the scrap in it.

(5) "Master log" means the document or an electronic facsimile prescribed by the department and the Washington state patrol in which an operator records transactions involving impounded vehicles.

(6) "Registered tow truck operator" or "operator" means any person who engages in the impounding, transporting, or storage of unauthorized vehicles or the disposal of abandoned vehicles.

(7) "Residential property" means property that has no more than four living units located on it.

(8) "Tow truck" means a motor vehicle that is equipped for and used in the business of towing vehicles with equipment as approved by the state patrol.

(9) "Tow truck number" means the number issued by the department to tow trucks used by a registered tow truck operator in the state of Washington.

(10) "Tow truck permit" means the permit issued annually by the department that has the classification of service the tow truck may provide stamped upon it.

(11) "Tow truck service" means the transporting upon the public streets and highways of this state of vehicles, together with personal effects and cargo, by a tow truck of a registered operator.



(12) "Unauthorized vehicle" means a vehicle that is subject to impoundment after being left unattended in one of the following public or private locations for the indicated period of time:

Subject to removal after:

- (a) Public locations:
  - (i) Constituting an accident or a traffic hazard as defined in RCW 46.55.113 . . . . . Immediately
  - (ii) On a highway and tagged as described in RCW 46.55.085 . . . . . 24 hours
  - (iii) In a publicly owned or controlled parking facility, properly posted under RCW 46.55.070 . . . . . Immediately
- (b) Private locations:
  - (i) On residential property . . . . . Immediately
  - (ii) On private, nonresidential property, properly posted under RCW 46.55.070 . . . . . Immediately
  - (iii) On private, nonresidential property, not posted . . . . . 24 hours

Sec. 9. RCW 46.55.100 and 1995 c 360 s 5 are each amended to read as follows:

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

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

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

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

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

(6) If the operator finds no owner identification, the operator shall immediately notify the appropriate law enforcement agency, which shall search the vehicle and any other items of personal property registered or titled with the department for the vehicle identification number or other appropriate identification numbers and check the necessary records to determine the vehicle's or other property's owners.

**Sec. 10.** RCW 46.12.095 and 1969 ex.s. c 170 s 16 are each amended to read as follows:

A security interest in a vehicle other than one held as inventory by a manufacturer or a dealer and for which a certificate of ownership is required is perfected only by compliance with the requirements of section 12 of this act under the circumstances provided for therein or by compliance with the requirements of this section:

(1) A security interest is perfected ~~((only))~~ by the department's receipt of: (a) The existing certificate, if any, and (b) an application for a certificate of ownership containing the name and address of the secured party, and (c) tender of the required fee.

(2) It is perfected as of the time of its creation: (a) If the papers and fee referred to in ~~((the preceding))~~ subsection (1) of this section are received by this department within ~~((eight department business))~~ twenty calendar days ~~((exclusive))~~ of the day on which the security agreement was created; or (b) if the secured party's name and address appear on the outstanding certificate of ownership; otherwise, as of the date on which the department has received the papers and fee required in subsection (1) of this section.

(3) If a vehicle is subject to a security interest when brought into this state, perfection of the security interest is determined by the law of the jurisdiction where the vehicle was when the security interest was attached, subject to the following:

(a) If the security interest was perfected under the law of the jurisdiction where the vehicle was when the security interest was attached, the following rules apply:

(b) If the name of the secured party is shown on the existing certificate of ownership issued by that jurisdiction, the security interest continues perfected in this state. The name of the secured party shall be shown on the certificate of

ownership issued for the vehicle by this state. The security interest continues perfected in this state upon the issuance of such ownership certificate.

(c) If the security interest was not perfected under the law of the jurisdiction where the vehicle was when the security interest was attached, it may be perfected in this state; in that case, perfection dates from the time of perfection in this state.

**Sec. 11.** RCW 46.12.101 and 1991 c 339 s 19 are each amended to read as follows:

A transfer of ownership in a motor vehicle is perfected by compliance with the requirements of this section.

(1) If an owner transfers his or her interest in a vehicle, other than by the creation, deletion, or change of a security interest, the owner shall, at the time of the delivery of the vehicle, execute an assignment to the transferee and provide an odometer disclosure statement under RCW 46.12.124 on the certificate of ownership or as the department otherwise prescribes, and cause the certificate and assignment to be transmitted to the transferee. ~~((Within five days, excluding Saturdays, Sundays, and state and federal holidays,))~~ The owner shall notify the department or its agents or subagents, in writing, on the appropriate form, of the date of the sale or transfer, the name and address of the owner and of the transferee, the transferee's driver's license number if available, and such description of the vehicle, including the vehicle identification number, the license plate number, or both, as may be required in the appropriate form provided or approved for that purpose by the department. The report of sale will be deemed properly filed if all information required in this section is provided on the form and includes a department-authorized notation that the document was received by the department, its agents, or subagents on or before the fifth day after the sale of the vehicle, excluding Saturdays, Sundays, and state and federal holidays. Agents and subagents shall immediately electronically transmit the seller's report of sale to the department. Reports of sale processed and recorded by the department's agents or subagents may be subject to fees as specified in RCW 46.01.140 (4)(a) or (5)(b).

(2) The requirements of subsection (1) of this section to provide an odometer disclosure statement apply to the transfer of vehicles held for lease when transferred to a lessee and then to the lessor at the end of the leasehold and to vehicles held in a fleet when transferred to a purchaser.

(3) Except as provided in RCW ~~((46.12.120))~~ 46.70.122 the transferee shall within fifteen days after delivery to the transferee of the vehicle, execute the application for a new certificate of ownership in the same space provided therefor on the certificate or as the department prescribes, and cause the certificates and application to be transmitted to the department.

(4) Upon request of the owner or transferee, a secured party in possession of the certificate of ownership shall, unless the transfer was a breach of its security agreement, either deliver the certificate to the transferee for transmission to the department or, when the secured party receives the owner's assignment from the transferee, it shall transmit the transferee's application for a new certificate, the

existing certificate, and the required fee to the department. Compliance with this section does not affect the rights of the secured party.

(5) If a security interest is reserved or created at the time of the transfer, the certificate of ownership shall be retained by or delivered to the person who becomes the secured party, and the parties shall comply with the provisions of RCW 46.12.170.

(6) If the purchaser or transferee fails or neglects to make application to transfer the certificate of ownership and license registration within fifteen days after the date of delivery of the vehicle, he or she shall on making application for transfer be assessed a twenty-five dollar penalty on the sixteenth day and two dollars additional for each day thereafter, but not to exceed one hundred dollars. The director may by rule establish conditions under which the penalty will not be assessed when an application for transfer is delayed for reasons beyond the control of the purchaser. Conditions for not assessing the penalty may be established for but not limited to delays caused by:

- (a) The department requesting additional supporting documents;
- (b) Extended hospitalization or illness of the purchaser;
- (c) Failure of a legal owner to release his or her interest;
- (d) Failure, negligence, or nonperformance of the department, auditor, or subagent.

Failure or neglect to make application to transfer the certificate of ownership and license registration within forty-five days after the date of delivery of the vehicle is a misdemeanor.

(7) Upon receipt of an application for reissue or replacement of a certificate of ownership and transfer of license registration, accompanied by the endorsed certificate of ownership or other documentary evidence as is deemed necessary, the department shall, if the application is in order and if all provisions relating to the certificate of ownership and license registration have been complied with, issue new certificates of title and license registration as in the case of an original issue and shall transmit the fees together with an itemized detailed report to the state treasurer, to be deposited in the motor vehicle fund.

(8) Once each quarter the department shall report to the department of revenue a list of those vehicles for which a seller's report has been received but no transfer of title has taken place.

**NEW SECTION.** Sec. 12. A new section is added to chapter 46.12 RCW to read as follows:

(1) The purpose of a transitional ownership record is to enable a security interest in a motor vehicle to be perfected in a timely manner when the certificate of ownership is not available at the time the security interest is created, and to provide for timely notification to security interest holders under chapter 46.55 RCW.

(2) A transitional ownership record is only acceptable as an ownership record for vehicles currently stored on the department's computer system and if the

certificate of ownership or other authorized proof of ownership for the motor vehicle:

(a) Is not in the possession of the selling vehicle dealer or new security interest holder at the time the transitional ownership record is submitted to the department; and

(b) To the best of the knowledge of the selling dealer or new security interest holder, the certificate of ownership will not be received for submission to the department within twenty calendar days of the date of sale of the vehicle, or if no sale is involved, within twenty calendar days of the date the security agreement or contract is executed.

(3) A person shall submit the transitional ownership record to the department or to any of its agents or subagents. Agents and subagents shall immediately electronically transmit the transitional ownership records to the department. A transitional ownership document processed and recorded by an agent or subagent may be subject to fees as specified in RCW 46.01.140(4)(a) or (5)(b).

(4) "Transitional ownership record" means a record containing all of the following information:

(a) The date of sale;

(b) The name and address of each owner of the vehicle;

(c) The name and address of each security interest holder;

(d) If there are multiple security interest holders, the priorities of interest if the security interest holders do not jointly hold a single security interest;

(e) The vehicle identification number, the license plate number, if any, the year, make, and model of the vehicle;

(f) The name of the selling dealer or security interest holder who is submitting the transitional ownership record; and

(g) The transferee's driver's license number, if available.

(5) The report of sale form prescribed or approved by the department under RCW 46.12.101 may be used by a vehicle dealer as the transitional ownership record.

(6) Notwithstanding RCW 46.12.095 (1) and (2), compliance with the requirements of this section shall result in perfection of a security interest in the vehicle as of the time the security interest was created. Upon receipt of the certificate of ownership for the vehicle, or upon receipt of written confirmation that only an electronic record of ownership exists or that the certificate of ownership has been lost or destroyed, the selling dealer or new security interest holder shall promptly submit the same to the department together with an application for a new certificate of ownership containing the name and address of the secured party and tender the required fee as provided in RCW 46.12.095(1).

***\*NEW SECTION. Sec. 13. If this act mandates an increased level of service by local governments, the local government may, under RCW 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the legislature. The claims shall be subject to verification by the office of financial management.***

\*Sec. 13 was vetoed. See message at end of chapter.

**NEW SECTION.** Sec. 14. RCW 46.20.344 and 1965 ex.s. c 121 s 45 are each repealed.

Passed the House March 9, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 30, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 30, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 7 and 13, Engrossed Substitute House Bill No. 1221 entitled:

"AN ACT Relating to the impoundment and forfeiture of vehicles being operated by persons who have a suspended or revoked driver's license;"

ESHB 1221 expands the law governing impoundment of vehicles driven by a person with a suspended or revoked license. I agree with the purpose of this legislation, however some sections are problematic.

Section 7 of ESHB 1221 is technically flawed. That section would authorize local governments to use "home impoundment" to immobilize vehicles driven by drunk drivers. This would be done by locking a "boot" or similar device on the vehicle. Unlike the rest of the bill, this section would not require that the driver's license have been suspended or revoked previously. It also would not specify how long the "boot" could remain on the vehicle. Under existing law, which the bill does not amend, vehicles impounded on a DUI arrest may be recovered at any time by paying towing and storage fees. But section 7 refers to a "period of home impoundment" without specifying any period. It also prohibits release of a vehicle if a "boot" is unlawfully removed, but once the "boot" is removed the question of release is moot. "Booting" cars is a useful alternative to towing them to impound lots, especially in rural areas. Regrettably, however, this section would not create a workable mechanism for that purpose.

Section 13 of ESHB 1221 would require that the Office of Financial Management verify claims from local governments for increased levels of services mandated by the act. This section would add an unnecessary additional bureaucratic layer to the existing statutory and procedural process for handling these claims. I will direct the Office of Financial Management and the Department of General Administration to work collaboratively with the appropriate legislative committees to ensure that timely and accurate information is provided to the Legislature.

For these reasons, I have vetoed sections 7 and 13 of Engrossed Substitute House Bill No. 1221.

With the exception of sections 7 and 13, Engrossed Substitute House Bill No. 1221 is approved."

## CHAPTER 204

[Engrossed House Bill 1254]

### PERMANENT RETENTION OF DRIVING RECORDS OF PERSONS CONVICTED OF ALCOHOL OR DRUG-RELATED OFFENSES

AN ACT Relating to the destruction of driving records; and amending RCW 46.52.100.

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

**Sec. 1.** RCW 46.52.100 and 1995 c 219 s 3 are each amended to read as follows:

Every district court, municipal court, and clerk of superior court shall keep or cause to be kept a record of every traffic complaint, traffic citation, notice of infraction, or other legal form of traffic charge deposited with or presented to the court or a traffic violations bureau, and shall keep a record of every official action by the court or its traffic violations bureau in reference thereto, including but not limited to a record of every conviction, forfeiture of bail, judgment of acquittal, finding that a traffic infraction has been committed, dismissal of a notice of infraction, and the amount of fine, forfeiture, or penalty resulting from every traffic complaint, citation, or notice of infraction deposited with or presented to the district court, municipal court, superior court, or traffic violations bureau. In the case of a record of a conviction for a violation of RCW 46.61.502 or 46.61.504, and notwithstanding any other provision of law, the record shall be maintained by the court permanently.

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

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

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

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

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

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

It shall be the duty of the officer, prosecuting attorney, or city attorney signing the charge or information in any case involving a charge of driving under the influence of intoxicating liquor or any drug immediately to make request to the director for an abstract of convictions and forfeitures which the director shall furnish.

Passed the House March 9, 1998.

Passed the Senate February 27, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

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## CHAPTER 205

[House Bill 2500]

### UNIFORM ACT ON FRESH PURSUIT—EXTENSION

AN ACT Relating to the uniform act on fresh pursuit; and amending RCW 10.89.010 and 10.89.050.

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

**Sec. 1.** RCW 10.89.010 and 1943 c 261 s 1 are each amended to read as follows:

Any member of a duly organized state, county or municipal peace unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit, of a person in order to arrest ~~((him))~~ the person on the ground that he or she is believed to have committed a felony in such other state~~(s)~~ or a violation of the laws of such other state relating to driving while intoxicated, driving under the influence of drugs or alcohol, driving while impaired, or reckless driving shall have the same authority to arrest and hold such person in custody as has any member of any duly organized state, county or municipal peace unit of this state, to arrest and hold in custody a person on the ground that he or she is believed to have committed a felony or a violation of the laws of such other state relating to driving while intoxicated, driving under the influence of drugs or alcohol, driving while impaired, or reckless driving in this state.

**Sec. 2.** RCW 10.89.050 and 1943 c 261 s 5 are each amended to read as follows:

The term "fresh pursuit" as used in this chapter, shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who reasonably is suspected of having committed a felony or a violation of such other state relating to driving while intoxicated, driving under the influence of drugs or alcohol, driving while impaired, or reckless driving. It shall also include the pursuit of a person suspected of having committed a supposed felony, or a supposed violation of the laws relating to driving while intoxicated, driving under the influence of drugs or alcohol, driving while impaired, or reckless driving, though no felony or violation of the laws relating



to driving while intoxicated, driving under the influence of drugs or alcohol, driving while impaired, or reckless driving actually has been committed, if there is reasonable ground for believing that a felony or a violation of the laws relating to driving while intoxicated, driving under the influence of drugs or alcohol, driving while impaired, or reckless driving has been committed. Fresh pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

Passed the House March 9, 1998.

Passed the Senate March 5, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

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## CHAPTER 206

[Substitute House Bill 2885]

### DRUNK DRIVING—ADDITIONAL PENALTY OPTIONS

AN ACT Relating to drunk driving; reenacting and amending RCW 46.61.5055; creating a new section; and prescribing penalties.

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

**Sec. 1.** RCW 46.61.5055 and 1997 c 229 s 11 and 1997 c 66 s 14 are each reenacted and amended to read as follows:

(1) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within five years shall be punished as follows:

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

(i) By imprisonment for not less than one day nor more than one year. Twenty-four consecutive hours of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court may order not less than fifteen days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

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

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

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

(i) By imprisonment for not less than two days nor more than one year. Two consecutive days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court may order not less than thirty days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

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

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

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

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

(i) By imprisonment for not less than thirty days nor more than one year. Thirty days of the imprisonment may not be suspended or deferred unless the

court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7)(a) In addition to any nonsuspendable and nondeferable jail sentence required by this section, whenever the court imposes less than one year in jail, the court shall also suspend but shall not defer a period of confinement for a period

not exceeding ~~((two))~~ five years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock or other biological or technical device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

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

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

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

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

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

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

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

(v) A conviction for a violation of RCW 46.61.5249 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

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

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

(viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522.

(b) "Within five years" means that the arrest for a prior offense occurred within five years of the arrest for the current offense.

***\*NEW SECTION. Sec. 2. If this act mandates an increased level of service by local governments, the local government may, under RCW 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the legislature. The claims shall be subject to verification by the office of financial management.***

\*Sec. 2 was vetoed. See message at end of chapter.

Passed the House March 9, 1998.

Passed the Senate March 5, 1998.

Approved by the Governor March 30, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 30, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 2, Substitute House Bill No. 2885 entitled:

"AN ACT Relating to drunk driving;"

SHB 2885 allows fifteen to thirty-day periods of home confinement in lieu of one to two days in jail for first-time DUI offenders. This legislation will be effective in reducing the jail costs of local governments.

Section 2 of SHB 2885 would require that the Office of Financial Management verify claims from local governments for increased levels of services mandated by the act. This section would add an unnecessary additional bureaucratic layer to the existing statutory and procedural process for handling these claims. I will direct the Office of Financial Management and the Department of General Administration to work collaboratively with the appropriate legislative committees to ensure that timely and accurate information is provided to the Legislature.

For this reason, I have vetoed section 2 of Substitute House Bill No. 2885.

With the exception of section 2, Substitute House Bill No. 2885 is approved."

## CHAPTER 207

[Second Substitute House Bill 3070]

### DRIVING UNDER THE INFLUENCE—INCREASING PENALTIES

AN ACT Relating to penalties for driving under the influence; amending RCW 46.61.5058, 46.01.260, 46.20.285, 46.61.503, 46.20.308, 46.20.3101, and 46.20.391; reenacting and amending RCW 46.61.5055; adding a new section to chapter 46.61 RCW; creating new sections; prescribing penalties; and providing an effective date.

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

**Sec. 1.** RCW 46.61.5055 and 1997 c 229 s 11 and 1997 c 66 s 14 are each reenacted and amended to read as follows:

(1) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within ((five)) seven years shall be punished as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered



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

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

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

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

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

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

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

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

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

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

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

(7)(a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes less than one year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding two years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock or other biological or technical device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

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

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

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

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

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

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

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

(v) A conviction for a violation of RCW 46.61.5249 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a

violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

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

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

(viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522.

(b) "Within ((five)) seven years" means that the arrest for a prior offense occurred within ((five)) seven years of the arrest for the current offense.

**Sec. 2.** RCW 46.61.5058 and 1995 c 332 s 6 are each amended to read as follows:

(1) Upon the arrest of a person or upon the filing of a complaint, citation, or information in a court of competent jurisdiction, based upon probable cause to believe that a person has violated RCW 46.61.502 or 46.61.504 or any similar municipal ordinance, if such person has a prior offense within ((five)) seven years as defined in RCW 46.61.5055, and where the person has been provided written notice that any transfer, sale, or encumbrance of such person's interest in the vehicle over which that person was actually driving or had physical control when the violation occurred, is unlawful pending either acquittal, dismissal, sixty days after conviction, or other termination of the charge, such person shall be prohibited from encumbering, selling, or transferring his or her interest in such vehicle, except as otherwise provided in (a), (b), and (c) of this subsection, until either acquittal, dismissal, sixty days after conviction, or other termination of the charge. The prohibition against transfer of title shall not be stayed pending the determination of an appeal from the conviction.

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

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

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

(2) On conviction for a violation of either RCW 46.61.502 or 46.61.504 or any similar municipal ordinance where the person convicted has a prior offense

within ~~((five))~~ seven years as defined in RCW 46.61.5055, the motor vehicle the person was driving or over which the person had actual physical control at the time of the offense, if the person has a financial interest in the vehicle, is subject to seizure and forfeiture pursuant to this section.

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

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

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

(6) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized vehicle within forty-five days of the seizure, the law enforcement agency shall give the person or persons a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020, the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of the vehicle is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be

under Title 34 RCW. In a court hearing between two or more claimants to the vehicle involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorneys' fees. The burden of producing evidence shall be upon the person claiming to be the legal owner or the person claiming to have the lawful right to possession of the vehicle. The seizing law enforcement agency shall promptly return the vehicle to the claimant upon a determination by the administrative law judge or court that the claimant is the present legal owner under Title 46 RCW or is lawfully entitled to possession of the vehicle.

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

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

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

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

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

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

(13) The net proceeds of a forfeited vehicle is the value of the forfeitable interest in the vehicle after deducting the cost of satisfying a bona fide security interest to which the vehicle is subject at the time of seizure; and in the case of a sold vehicle, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents.

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

Sec. 3. RCW 46.01.260 and 1997 c 66 s 11 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the director, in his or her discretion, may destroy applications for vehicle licenses, copies of vehicle licenses issued, applications for drivers' licenses, copies of issued drivers' licenses, certificates of title and registration or other documents, records or supporting papers on file in his or her office which have been microfilmed or photographed or are more than five years old. If the applications for vehicle licenses are renewal applications, the director may destroy such applications when the computer record thereof has been updated.

(2)(a) The director shall not destroy records of convictions or adjudications of RCW 46.61.520 and 46.61.522 or records of deferred prosecutions granted under RCW 10.05.120 and shall maintain such records permanently on file.

(b) The director shall not, within ~~((ten))~~ fifteen years from the date of conviction~~(;))~~ or adjudication~~(; or entry of deferred prosecution))~~, destroy records of the following:

(i) Convictions or adjudications of the following offenses: RCW 46.61.502 or 46.61.504; or

(ii) If the offense was originally charged as one of the offenses designated in (a) or (b)(i) of this subsection, convictions or adjudications of the following offenses: RCW 46.61.500 or 46.61.5249 or any other violation that was originally charged as one of the offenses designated in (a) or (b)(i) of this subsection~~((; or~~ (iii) Deferred prosecutions granted under RCW 10.05.120)).

(c) For purposes of RCW 46.52.100 and 46.52.130, offenses subject to this subsection shall be considered "alcohol-related" offenses.

**Sec. 4.** RCW 46.20.285 and 1996 c 199 s 5 are each amended to read as follows:

The department shall forthwith revoke the license of any driver for the period of one calendar year unless otherwise provided in this section, upon receiving a record of the driver's conviction of any of the following offenses, when the conviction has become final:

(1) For vehicular homicide the period of revocation shall be two years. The revocation period shall be tolled during any period of total confinement for the offense;

(2) Vehicular assault. The revocation period shall be tolled during any period of total confinement for the offense;

(3) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle, ~~((upon a showing by the department's records that the conviction is the second such conviction for the driver within a period of five years. Upon a showing that the conviction is the third such conviction for the driver within a period of five years, the period of revocation shall be two years))~~ for the period prescribed in RCW 46.61.5055;

(4) Any felony in the commission of which a motor vehicle is used;

(5) Failure to stop and give information or render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or

personal injury of another or resulting in damage to a vehicle that is driven or attended by another;

(6) Perjury or the making of a false affidavit or statement under oath to the department under Title 46 RCW or under any other law relating to the ownership or operation of motor vehicles;

(7) Reckless driving upon a showing by the department's records that the conviction is the third such conviction for the driver within a period of two years.

**Sec. 5.** RCW 46.61.503 and 1995 c 332 s 2 are each amended to read as follows:

(1) Notwithstanding any other provision of this title, a person is guilty of driving a motor vehicle after consuming alcohol if the person operates a motor vehicle within this state and the person:

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

(b) Has, within two hours after operating the motor vehicle, an alcohol concentration of ~~((0.02 or more))~~ at least 0.02 but less than the concentration specified in RCW 46.61.502, as shown by analysis of the person's breath or blood made under RCW 46.61.506.

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

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

(4) A violation of this section is a misdemeanor.

**\*NEW SECTION.** *Sec. 6. A new section is added to chapter 46.61 RCW to read as follows:*

*(1) A defendant who is arrested for an offense involving driving while under the influence as defined in RCW 46.61.502, driving under age twenty-one after consuming alcohol as defined in RCW 46.61.503, or being in physical control of a vehicle while under the influence as defined in RCW 46.61.504, shall be required to appear in person before a magistrate within one judicial day after the arrest.*

*(2) A defendant who is charged by citation, complaint, or information with an offense involving driving while under the influence as defined in RCW 46.61.502, driving under age twenty-one after consuming alcohol as defined in RCW 46.61.503, or being in physical control of a vehicle while under the*

*influence as defined in RCW 46.61.504, and who is not arrested, shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information.*

*(3) At the time of an appearance required by this section, the court shall determine the necessity of imposing conditions of pretrial release according to the procedures established by court rule for a preliminary appearance or an arraignment.*

*(4) Appearances required by this section are mandatory and may not be waived.*

\*Sec. 6 was vetoed. See message at end of chapter.

**Sec. 7.** RCW 46.20.308 and 1995 c 332 s 1 are each amended to read as follows:

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

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or the person to have been driving or in actual physical control of a motor vehicle while having alcohol in a concentration ~~((of 0.02 or more))~~ in violation of RCW 46.61.503 in his or her system and being under the age of twenty-one. However, in those instances where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility in which a breath testing instrument is not present or where the officer has reasonable grounds to believe that the person is under the influence of a drug, a blood test shall be administered by a qualified person as provided in RCW 46.61.506(4). The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver that:

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

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



violation of RCW 46.61.502, 46.61.503, or 46.61.504 in the case of a person under age twenty-one; and

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

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

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

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

(6) If, after arrest and after the other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of the person's breath or blood is 0.10 or more if the person is age twenty-one or over, or is (~~0.02 or more~~) in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is under the age of twenty-one, or the person refuses to submit to a test, the arresting officer or other law enforcement officer at whose direction any test has been given, or the department, where applicable, if the arrest results in a test of the person's blood, shall:

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

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

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

(d) Serve notice in writing that the marked license or permit, if any, is a temporary license that is valid for sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or until the suspension, revocation, or denial of the person's license, permit, or privilege to drive is sustained at a hearing pursuant to

subsection (8) of this section, whichever occurs first. No temporary license is valid to any greater degree than the license or permit that it replaces; and

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

(i) That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or was under the age of twenty-one years and had been driving or was in actual physical control of a motor vehicle while having an alcohol concentration (~~(of 0.02 or more)~~) in violation of RCW 46.61.503;

(ii) That after receipt of the warnings required by subsection (2) of this section the person refused to submit to a test of his or her blood or breath, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was 0.10 or more if the person is age twenty-one or over, or was (~~0.02 or more~~) in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is under the age of twenty-one; and

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

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

(8) A person receiving notification under subsection (6)(b) of this section may, within thirty days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of one hundred dollars as part of the request. If the request is mailed, it must be postmarked within thirty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required one hundred dollar fee, the department shall afford the person an opportunity for a hearing. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within sixty days following the arrest or following the date notice has been given in the event notice is given by the department following a blood test, unless otherwise agreed to by the department and the person, in which case the action by the department shall be stayed, and any valid temporary license marked under subsection (6)(c) of this section

extended, if the person is otherwise eligible for licensing. For the purposes of this section, the scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration ~~((of 0.02 or more))~~ in violation of RCW 46.61.503 and was under the age of twenty-one, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered without express consent as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.10 or more if the person was age twenty-one or over at the time of the arrest, or was ~~((0.02 or more))~~ in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person was under the age of twenty-one at the time of the arrest. The sworn report or report under a declaration authorized by RCW 9A.72.085 submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration ~~((of 0.02 or more))~~ in violation of RCW 46.61.503 and was under the age of twenty-one and that the officer complied with the requirements of this section.

A hearing officer shall conduct the hearing, may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer oaths to witnesses. The hearing officer shall not issue a subpoena for the attendance of a witness at the request of the person unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The sworn report or report under a declaration authorized by RCW 9A.72.085 of the law enforcement officer and any other evidence accompanying the report shall be admissible without further evidentiary foundation and the certifications authorized by the criminal rules for courts of limited jurisdiction shall be admissible without further evidentiary foundation. The person may be represented by counsel, may question witnesses, may present evidence, and may testify. The department shall order that the suspension, revocation, denial, or placement in probationary status either be rescinded or sustained.

(9) If the suspension, revocation, denial, or placement in probationary status is sustained after such a hearing, the person whose license, privilege, or permit is suspended, revoked, denied, or placed in probationary status has the right to file

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

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

A suspension, revocation, or denial imposed under this section, other than as a result of a breath test refusal, shall be stayed if the person is accepted for deferred prosecution as provided in chapter 10.05 RCW for the incident upon which the suspension, revocation, or denial is based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension, revocation, or denial reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension, revocation, or denial canceled.

(11) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, revoked, or denied, the department shall give information in writing

of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license.

**Sec. 8.** RCW 46.20.3101 and 1995 c 332 s 3 are each amended to read as follows:

Pursuant to RCW 46.20.308, the department shall suspend, revoke, or deny the arrested person's license, permit, or privilege to drive as follows:

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

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

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

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

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

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

(3) In the case of an incident where a person under age twenty-one has submitted to or been administered a test or tests indicating that the alcohol concentration of the person's breath or blood was ~~((0.02 or more))~~ in violation of RCW 46.61.503:

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

(b) For a second or subsequent incident within ~~((five))~~ seven years, revocation or denial for one year or until the person reaches age twenty-one, whichever is longer.

**Sec. 9.** RCW 46.20.391 and 1995 c 332 s 12 are each amended to read as follows:

(1) Any person licensed under this chapter who is convicted of an offense relating to motor vehicles for which suspension or revocation of the driver's license is mandatory, other than vehicular homicide or vehicular assault, may submit to the department an application for an occupational driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is engaged in an occupation or trade that makes it essential that the

petitioner operate a motor vehicle, may issue an occupational driver's license and may set definite restrictions as provided in RCW 46.20.394. No person may petition for, and the department shall not issue, an occupational driver's license that is effective during the first thirty days of any suspension or revocation imposed for a violation of RCW 46.61.502 or 46.61.504. A person aggrieved by the decision of the department on the application for an occupational driver's license may request a hearing as provided by rule of the department.

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

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

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

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

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

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

**NEW SECTION.** Sec. 10. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.

***\*NEW SECTION. Sec. 11. If this act mandates an increased level of service by local governments, the local government may, under RCW 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the legislature. The claims shall be subject to verification by the office of financial management.***

\*Sec. 11 was vetoed. See message at end of chapter.

**NEW SECTION.** Sec. 12. This act takes effect January 1, 1999.

Passed the House March 9, 1998.

Passed the Senate March 5, 1998.

Approved by the Governor March 30, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 30, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 6 and 11, Second Substitute House Bill No. 3070 entitled:

"AN ACT Relating to penalties for driving under the influence;"

2SHB 3070 will make certain that a driver's DUI history will be kept on file for a longer period of time for consideration by the courts in the event of subsequent offenses. I strongly agree with the purpose of this legislation; however, two sections are problematic.

Section 6 of 2SHB 3070 would require drunk drivers to appear in court promptly after arrest or the filing of a charge, and would be a desirable improvement in the way these cases are handled. However, because of a flaw in drafting, the court appearance would be required the day after arrest, even for defendants who had not yet been formally charged by citation, complaint, or information. This would be unworkable, and the District and Municipal Court Judges Association, which initially proposed section 6, has asked me to veto it. Fortunately, E2SSB 6293 includes a similar provision which is better drafted, and I have signed that bill today.

Section 11 of 2SHB 3070 would require that the Office of Financial Management verify claims from local governments for increased levels of services mandated by the act. This section would add an unnecessary additional bureaucratic layer to the existing statutory and procedural process for handling these claims. I will direct the Office of Financial Management and the Department of General Administration to work collaboratively with the appropriate legislative committees to ensure that timely and accurate information is provided to the Legislature.

For these reasons, I have vetoed sections 6 and 11 of Second Substitute House Bill No. 3070.

With the exception of sections 6 and 11, Second Substitute House Bill No. 3070 is approved."

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## CHAPTER 208

[Second Substitute House Bill 3089]

### DRUNK DRIVING—LIMITING DEFERRED PROSECUTION PROGRAM ELIGIBILITY

AN ACT Relating to drunk driving; amending RCW 10.05.010, 10.05.100, 10.05.120, and 10.05.160; creating new sections; and providing an effective date.

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

**Sec. I.** RCW 10.05.010 and 1985 c 352 s 4 are each amended to read as follows:

In a court of limited jurisdiction a person charged with a misdemeanor or gross misdemeanor may petition the court to be considered for a deferred prosecution program. The petition shall be filed with the court at least seven days before the date set for trial but, upon a written motion and affidavit establishing good cause for the delay and failure to comply with this section, the court may waive this requirement subject to the defendant's reimbursement to the court of the witness fees and expenses due for subpoenaed witnesses who have appeared on the date set for trial.

A person charged with a traffic infraction, misdemeanor, or gross misdemeanor under Title 46 RCW shall not be eligible for a deferred prosecution program unless the court makes specific findings pursuant to RCW 10.05.020. Such person shall not be eligible for a deferred prosecution program more than

once (~~in any five-year period~~). Separate offenses committed more than seven days apart may not be consolidated in a single program.

**Sec. 2.** RCW 10.05.100 and 1985 c 352 s 13 are each amended to read as follows:

If a petitioner is subsequently convicted of a similar offense (~~white~~) that was committed while the petitioner was in a deferred prosecution program, upon notice the court shall remove the petitioner's docket from the deferred prosecution file and the court shall enter judgment pursuant to RCW 10.05.020.

**Sec. 3.** RCW 10.05.120 and 1994 c 275 s 19 are each amended to read as follows:

~~(Upon)~~ Three years after receiving proof of successful completion of the two-year treatment program, but not before five years following entry of the order of deferred prosecution, the court shall dismiss the charges pending against the petitioner.

**Sec. 4.** RCW 10.05.160 and 1985 c 352 s 18 are each amended to read as follows:

The prosecutor may appeal an order granting deferred prosecution on any or all of the following grounds:

(1) Prior deferred prosecution has been granted to the defendant (~~within five years~~);

(2) Failure of the court to obtain proof of insurance or a treatment plan conforming to the requirements of this chapter;

(3) Failure of the court to comply with the requirements of RCW 10.05.100;

(4) Failure of the evaluation facility to provide the information required in RCW 10.05.040 and 10.05.050, if the defendant has been referred to the facility for treatment. If an appeal on such basis is successful, the trial court may consider the use of another treatment facility.

**NEW SECTION.** **Sec. 5.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.

**\*NEW SECTION.** **Sec. 6.** *If this act mandates an increased level of service by local governments, the local government may, under RCW 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the legislature. The claims shall be subject to verification by the office of financial management.*

\*Sec. 6 was vetoed. See message at end of chapter.

**NEW SECTION.** **Sec. 7.** This act takes effect January 1, 1999.

Passed the House March 9, 1998.

Passed the Senate March 5, 1998.

Approved by the Governor March 30, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 30, 1998.



Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 6, Second Substitute House Bill No. 3089 entitled:

"AN ACT Relating to drunk driving;"

2SHB 3089 allows a person to dispose of a DUI case by deferred prosecution only once in a lifetime, and reinstates the deferred charge if the person has a second DUI within five years. I strongly agree with this legislation; however, one section is problematic.

Section 6 of 2SHB 3089 would require that the Office of Financial Management verify claims from local governments for increased levels of services mandated by the act. This section would add an unnecessary additional bureaucratic layer to the existing statutory and procedural process for handling these claims. I will direct the Office of Financial Management and the Department of General Administration to work collaboratively with the appropriate legislative committees to ensure that timely and accurate information is provided to the Legislature.

For this reason, I have vetoed section 6 of Second Substitute House Bill No. 3089.

With the exception of section 6, Second Substitute House Bill No. 3089 is approved."

## CHAPTER 209

[Engrossed Senate Bill 6142]

### DRIVING UNDER THE INFLUENCE—ADMINISTRATIVE LICENSE SUSPENSION FOR FIRST-TIME OFFENDERS

AN ACT Relating to administrative license suspension for first-time violators of laws against driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug; amending RCW 46.20.308, 46.20.3101, 46.20.355, and 46.20.391; creating a new section; prescribing penalties; and providing an effective date.

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

**Sec. 1.** RCW 46.20.308 and 1995 c 332 s 1 are each amended to read as follows:

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

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or the person to have been driving or in actual physical control of a motor vehicle while having alcohol in a concentration of 0.02 or more in his or her system and being under the age of twenty-one. However, in those instances where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility in which a breath testing

instrument is not present or where the officer has reasonable grounds to believe that the person is under the influence of a drug, a blood test shall be administered by a qualified person as provided in RCW 46.61.506(4). The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) A person receiving notification under subsection (6)(b) of this section may, within thirty days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of one hundred dollars as part of the request. If the request is mailed, it must be postmarked within thirty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required one hundred dollar fee, the department shall afford the person an opportunity for a hearing. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled

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

A hearing officer shall conduct the hearing, may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer oaths to witnesses. The hearing officer shall not issue a subpoena for the attendance of a witness at the request of the person unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The sworn report or report under a declaration authorized by RCW 9A.72.085 of the law enforcement officer and any other evidence accompanying the report shall be admissible without further evidentiary foundation and the certifications authorized by the criminal rules for courts of limited jurisdiction shall be admissible without further evidentiary foundation. The person may be

represented by counsel, may question witnesses, may present evidence, and may testify. The department shall order that the suspension, revocation, or denial(~~(; or placement in probationary status)~~) either be rescinded or sustained.

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

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

A suspension, revocation, or denial imposed under this section, other than as a result of a breath test refusal, shall be stayed if the person is accepted for deferred prosecution as provided in chapter 10.05 RCW for the incident upon

which the suspension, revocation, or denial is based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension, revocation, or denial reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension, revocation, or denial canceled.

(11) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, revoked, or denied, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license.

**Sec. 2.** RCW 46.20.3101 and 1995 c 332 s 3 are each amended to read as follows:

Pursuant to RCW 46.20.308, the department shall suspend, revoke, or deny the arrested person's license, permit, or privilege to drive as follows:

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

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

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

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

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

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

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

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

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

**Sec. 3.** RCW 46.20.355 and 1995 1st sp.s. c 17 s 1 are each amended to read as follows:

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

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

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

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

(5) A probationary license shall enable the department and law enforcement personnel to determine that the person is on probationary status. The fact that a person's driving privilege is in probationary status or that the person has been issued a probationary license shall not be a part of the person's record that is available to insurance companies.

Sec. 4. RCW 46.20.391 and 1995 c 332 s 12 are each amended to read as follows:

(1) Any person licensed under this chapter who is convicted of an offense relating to motor vehicles for which suspension or revocation of the driver's license is mandatory, other than vehicular homicide or vehicular assault, or who has had his or her license suspended under RCW 46.20.3101 (2)(a) or (3)(a), may submit to the department an application for an occupational driver's license. The

department, upon receipt of the prescribed fee and upon determining that the petitioner is engaged in an occupation or trade that makes it essential that the petitioner operate a motor vehicle, may issue an occupational driver's license and may set definite restrictions as provided in RCW 46.20.394. No person may petition for, and the department shall not issue, an occupational driver's license that is effective during the first thirty days of any suspension or revocation imposed for a violation of RCW 46.61.502 or 46.61.504 or pursuant to RCW 46.20.3101 (2)(a) or (3)(a). A person aggrieved by the decision of the department on the application for an occupational driver's license may request a hearing as provided by rule of the department.

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

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

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

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

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

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

NEW SECTION. Sec. 5. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.

NEW SECTION. Sec. 6. This act takes effect January 1, 1999.

Passed the Senate March 7, 1998.

Passed the House March 5, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.



## CHAPTER 210

[Engrossed Substitute Senate Bill 6165]

## IGNITION INTERLOCK DEVICES—MARY JOHNSEN ACT

AN ACT Relating to use of ignition interlock devices; amending RCW 46.20.720, 46.20.740, and 46.55.113; reenacting and amending RCW 46.61.5055; adding a new section to chapter 46.61 RCW; creating new sections; prescribing penalties; and providing an effective date.

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

**NEW SECTION.** Sec. 1. This act may be known and cited as the Mary Johnsen Act.

Sec. 2. RCW 46.20.720 and 1997 c 229 s 8 are each amended to read as follows:

(1) The court may order that after a period of suspension, revocation, or denial of driving privileges, and for up to as long as the court has jurisdiction, any person convicted of any offense involving the use, consumption, or possession of alcohol while operating a motor vehicle may drive only a motor vehicle equipped with a functioning ignition interlock or other biological or technical device.

(2) If a person is convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance, the court shall order that after a period of suspension, revocation, or denial of driving privileges, the person may drive only a motor vehicle equipped with a functioning ignition interlock or other biological or technical device. The court may waive the requirement for the use of such a device if the court makes a specific finding in writing that such devices are not reasonably available in the local area.

(3) The court shall establish a specific calibration setting at which the ignition interlock or other biological or technical device will prevent the motor vehicle from being started and the period of time that the person shall be subject to the restriction. In the case of a person under subsection (2) of this section, the period of time of the restriction will be as follows:

(a) For a person subject to RCW 46.61.5055 (1)(b), (2), or (3) who has not previously been restricted under this section, a period of not less than one year;

(b) For a person who has previously been restricted under (a) of this subsection, a period of not less than five years;

(c) For a person who has previously been restricted under (b) of this subsection, a period of not less than ten years.

For purposes of this section, "convicted" means being found guilty of an offense or being placed on a deferred prosecution program under chapter 10.05 RCW.

*\*Sec. 3. RCW 46.20.740 and 1997 c 229 s 10 are each amended to read as follows:*

*(1) The department shall attach or imprint a notation on the driver's license of any person restricted under RCW 46.20.720 or 46.61.5055 stating that the*

*person may operate only a motor vehicle equipped with an ignition interlock or other biological or technical device.*

*(2) It is a misdemeanor for a person with such a notation on his or her driver's license to operate a motor vehicle that is not so equipped. For the first such conviction, the minimum sentence is thirty days in jail. For a second offense, the minimum sentence is sixty days in jail. For a third or subsequent offense, the minimum sentence is ninety days in jail.*

*\*Sec. 3 was vetoed. See message at end of chapter.*

Sec. 4. RCW 46.61.5055 and 1997 c 229 s 11 and 1997 c 66 s 14 are each reenacted and amended to read as follows:

(1) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within five years shall be punished as follows:

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

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

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

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

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

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

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

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

(iv) By a court-ordered restriction under RCW 46.20.720.

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

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

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

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

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

(iv) By a court-ordered restriction under RCW 46.20.720; or

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

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

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

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

(iv) By a court-ordered restriction under RCW 46.20.720.

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

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

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

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

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

(iv) By a court-ordered restriction under RCW 46.20.720; or

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

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

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

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

(iv) By a court-ordered restriction under RCW 46.20.720.

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

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

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

(7)(a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes less than one year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding two years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock or other biological or technical device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

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

(c) For each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for thirty days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time

the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by thirty days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection.

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

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

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

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

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

(v) A conviction for a violation of RCW 46.61.5249 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

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

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

(viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522.

(b) "Within five years" means that the arrest for a prior offense occurred within five years of the arrest for the current offense.

***\*Sec. 5. RCW 46.55.113 and 1997 c 66 s 7 are each amended to read as follows:***

***Whenever the driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504 or any similar municipal ordinance, the arresting officer may take custody of the vehicle and provide for its prompt removal to a place of safety. If the driver is in violation of a restriction under RCW 46.20.720 or 46.61.5055 to operate only a motor vehicle equipped with an ignition interlock or other biological or technical device, the arresting officer shall take custody of the vehicle and provide for its prompt removal to a place of safety. The vehicle will remain impounded for use as evidence at a trial regarding the violation of the restriction.***

***In addition, a police officer may take custody of a vehicle and provide for its prompt removal to a place of safety under any of the following circumstances:***

*(1) Whenever a police officer finds a vehicle standing upon the roadway in violation of any of the provisions of RCW 46.61.560, the officer may provide for the removal of the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway;*

*(2) Whenever a police officer finds a vehicle unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety;*

*(3) Whenever a police officer finds an unattended vehicle at the scene of an accident or when the driver of a vehicle involved in an accident is physically or mentally incapable of deciding upon steps to be taken to protect his or her property;*

*(4) Whenever the driver of a vehicle is arrested and taken into custody by a police officer;*

*(5) Whenever a police officer discovers a vehicle that the officer determines to be a stolen vehicle;*

*(6) Whenever a vehicle without a special license plate, card, or decal indicating that the vehicle is being used to transport a disabled person under RCW 46.16.381 is parked in a stall or space clearly and conspicuously marked under RCW 46.61.581 which space is provided on private property without charge or on public property;*

*(7) Upon determining that a person is operating a motor vehicle without a valid driver's license in violation of RCW 46.20.005 or with a license that has been expired for ninety days or more, or with a suspended or revoked license in violation of RCW 46.20.342 or 46.20.420.*

*Nothing in this section may derogate from the powers of police officers under the common law. For the purposes of this section, a place of safety may include the business location of a registered tow truck operator.*

*\*Sec. 5 was vetoed. See message at end of chapter.*

**\*NEW SECTION.** *Sec. 6. A new section is added to chapter 46.61 RCW to read as follows:*

*Charges of a violation of RCW 46.61.502, 46.61.503, or 46.61.504, whether made by citation, complaint, or information, shall be filed, and arraignment on those charges shall be held, within twenty-one days following arrest.*

*\*Sec. 6 was vetoed. See message at end of chapter.*

**NEW SECTION.** *Sec. 7. The legislature finds that driving is a privilege and that the state may restrict that privilege in the interests of public safety. One such reasonable restriction is requiring certain individuals, if they choose to drive, to drive only vehicles equipped with ignition interlock devices. The legislature further finds that the costs of these devices are minimal and are affordable. It is the intent of the legislature that these devices be paid for by the drivers using them and that neither the state nor entities of local government provide any public funding for this purpose.*

**\*NEW SECTION.** *Sec. 8. If this act mandates an increased level of service by local governments, the local government may, under RCW 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the legislature. The claims shall be subject to verification by the office of financial management.*

\*Sec. 8 was vetoed. See message at end of chapter.

**NEW SECTION.** **Sec. 9.** This act takes effect January 1, 1999.

Passed the Senate March 12, 1998.

Passed the House March 11, 1998.

Approved by the Governor March 30, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 30, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 3, 5, 6, and 8, Engrossed Substitute Senate Bill No. 6165 entitled:

"AN ACT Relating to use of ignition interlock devices;"

ESSB 6165 requires that ignition interlock devices be used by individuals convicted of drunk driving with a blood alcohol content of 0.15 or higher. I support the intent of this legislation; however, some sections are problematic.

Section 3 of ESSB 6165 would mandate jail terms of 30, 60, and 90 days for driving without an interlock when required to do so. These mandatory sentences should not be enacted without a clear showing that they are necessary, and without carefully considering the costs to local governments. Before further restricting judges' discretion in these cases, we should gain experience with mandatory interlock use, frequency of violations, and reasons for violations. Section 3 would deny courts discretion to consider emergencies or other circumstances that might excuse or mitigate this behavior. Driving without an interlock in violation of a court order is currently punishable by up to 90 days in jail. I believe courts should continue to have sentencing discretion, especially in the early stages of mandatory interlock use.

Section 5 of ESSB 6165 would require that vehicles driven without interlocks, in violation of court orders, be impounded "for use as evidence." I am concerned about the substantial costs this requirement could impose on local governments. Currently, police officers have the authority to take custody of evidence when they need to do so, but they may not need to do so in all interlock violation cases. Impoundment, at the driver's expense, would be an appropriate remedy for violating court orders after a DUI, but this section does not assure that the driver, rather than the local government, would be financially responsible.

Section 6 of ESSB 6165 would require that all DUI charges be filed in court, and defendants be arraigned on those charges, within 21 days after arrest. I share the policy goal behind this section — to assure that defendants have a reasonable chance to qualify for deferred prosecution in appropriate cases. However, the effect of that requirement amounts to a 21-day statute of limitation on DUI cases. The vast majority of these cases can and should be charged much sooner than 21 days after arrest. But some require more time for legitimate investigative reasons, like getting blood test results or determining whether accident victims will recover. These are likely to be the more serious cases involving drunk driving, cases that should not be subject to dismissal because of such a deadline. The goal of informing defendants about deferred prosecution can be accomplished by bringing them to court promptly after arrest or filing charges, as required by section 2 of E2SSB 6293, which I signed today. Finally, I am concerned that section 6 falls outside the subject of the bill as expressed in the title, in violation of Article II, Section 19 of the State Constitution.

Section 8 of ESSB 6165 would require that the Office of Financial Management verify claims from local governments for increased levels of services mandated by the act. This section would add an unnecessary additional bureaucratic layer to the existing statutory and procedural process for handling these claims. I will direct the Office of Financial



Management and the Department of General Administration to work collaboratively with the appropriate legislative committees to ensure that timely and accurate information is provided to the Legislature.

For these reasons, I have vetoed sections 3, 5, 6, and 8 of Engrossed Substitute Senate Bill No. 6165.

With the exception of sections 3, 5, 6, and 8, Engrossed Substitute Senate Bill No. 6165 is approved."

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## CHAPTER 211

[Engrossed Substitute Senate Bill 6166]

### DRIVING UNDER THE INFLUENCE—INCREASING PENALTIES

AN ACT Relating to penalties for driving under the influence; amending RCW 46.61.520 and 9.94A.360; reenacting and amending RCW 46.61.5055 and 9.94A.310; adding a new section to chapter 46.61 RCW; creating a new section; prescribing penalties; and providing an effective date.

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

**Sec. 1.** RCW 46.61.5055 and 1997 c 229 s 11 and 1997 c 66 s 14 are each reenacted and amended to read as follows:

(1) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within five years shall be punished as follows:

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

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

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

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

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

(i) By imprisonment for not less than two days nor more than one year. Two consecutive days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would

impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

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

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

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

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

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

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

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

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

(i) By imprisonment for not less than forty-five days nor more than one year. Forty-five days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court

shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7)(a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes less than one year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding two years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock or other biological or technical device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

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

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

then in effect shall be extended by thirty days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection.

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

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

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

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

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

(v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

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

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

(viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522.

(h) "Within five years" means that the arrest for a prior offense occurred within five years of the arrest for the current offense.

**Sec. 2.** RCW 46.61.520 and 1996 c 199 s 7 are each amended to read as follows:

(1) When the death of any person ensues within three years as a proximate result of injury proximately caused by the driving of any vehicle by any person, the driver is guilty of vehicular homicide if the driver was operating a motor vehicle:

(a) While under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502; or

(h) In a reckless manner; or

(c) With disregard for the safety of others.

(2) Vehicular homicide is a class A felony punishable under chapter 9A.20 RCW, except that, for a conviction under subsection (1)(a) of this section, an additional two years shall be added to the sentence for each prior offense as defined in RCW 46.61.5055.

Sec. 3. RCW 9.94A.310 and 1997 c 365 s 3 and 1997 c 338 s 50 are each reenacted and amended to read as follows:

(1) **TABLE 1**  
**Sentencing Grid**

| SERIOUSNESS SCORE | OFFENDER SCORE                             |                      |                      |                      |                       |                      |                      |                       |                       |                      |
|-------------------|--|----------------------|----------------------|----------------------|-----------------------|----------------------|----------------------|-----------------------|-----------------------|----------------------|
|                   | 0  | 1                    | 2                    | 3                    | 4                     | 5                    | 6                    | 7                     | 8                     | 9 or more            |
| <b>XV</b>         | Life Sentence without Parole/Death Penalty |                      |                      |                      |                       |                      |                      |                       |                       |                      |
| <b>XIV</b>        | 23y4m<br>240-<br>320                       | 24y4m<br>250-<br>333 | 25y4m<br>261-<br>347 | 26y4m<br>271-<br>361 | 27y4m<br>281-<br>374  | 28y4m<br>291-<br>388 | 30y4m<br>312-<br>416 | 32y10m<br>338-<br>450 | 36y<br>370-<br>493    | 40y<br>411-<br>548   |
| <b>XIII</b>       | 14y4m<br>123-<br>220                       | 15y4m<br>134-<br>234 | 16y2m<br>144-<br>244 | 17y<br>154-<br>254   | 17y11m<br>165-<br>265 | 18y9m<br>175-<br>275 | 20y5m<br>195-<br>295 | 22y2m<br>216-<br>316  | 25y7m<br>257-<br>357  | 29y<br>240-<br>397   |
| <b>XII</b>        | 9y<br>93-<br>123                           | 9y11m<br>102-<br>136 | 10y9m<br>111-<br>147 | 11y8m<br>120-<br>160 | 12y6m<br>129-<br>171  | 13y5m<br>138-<br>184 | 15y9m<br>162-<br>216 | 17y3m<br>178-<br>236  | 20y3m<br>209-<br>277  | 23y3m<br>240-<br>318 |
| <b>XI</b>         | 7y6m<br>78-<br>102                         | 8y4m<br>86-<br>114   | 9y2m<br>95-<br>125   | 9y11m<br>102-<br>136 | 10y9m<br>111-<br>147  | 11y7m<br>120-<br>158 | 14y2m<br>146-<br>194 | 15y5m<br>159-<br>211  | 17y11m<br>185-<br>245 | 20y5m<br>210-<br>280 |
| <b>X</b>          | 5y<br>51-<br>68                            | 5y6m<br>57-<br>75    | 6y<br>62-<br>82      | 6y6m<br>67-<br>89    | 7y<br>72-<br>96       | 7y6m<br>77-<br>102   | 9y6m<br>98-<br>130   | 10y6m<br>108-<br>144  | 12y6m<br>129-<br>171  | 14y6m<br>149-<br>198 |
| <b>IX</b>         | 3y<br>31-<br>41                            | 3y6m<br>36-<br>48    | 4y<br>41-<br>54      | 4y6m<br>46-<br>61    | 5y<br>51-<br>68       | 5y6m<br>57-<br>75    | 7y6m<br>77-<br>102   | 8y6m<br>87-<br>116    | 10y6m<br>108-<br>144  | 12y6m<br>129-<br>171 |
| <b>VIII</b>       | 2y<br>21-<br>27                            | 2y6m<br>26-<br>34    | 3y<br>31-<br>41      | 3y6m<br>36-<br>48    | 4y<br>41-<br>54       | 4y6m<br>46-<br>61    | 6y6m<br>67-<br>89    | 7y6m<br>77-<br>102    | 8y6m<br>87-<br>116    | 10y6m<br>108-<br>144 |
| <b>VII</b>        | 18m<br>15-<br>20                           | 2y<br>21-<br>27      | 2y6m<br>26-<br>34    | 3y<br>31-<br>41      | 3y6m<br>36-<br>48     | 4y<br>41-<br>54      | 5y6m<br>57-<br>75    | 6y6m<br>67-<br>89     | 7y6m<br>77-<br>102    | 8y6m<br>87-<br>116   |
| <b>VI</b>         | 13m<br>12+-<br>14                          | 18m<br>15-<br>20     | 2y<br>21-<br>27      | 2y6m<br>26-<br>34    | 3y<br>31-<br>41       | 3y6m<br>36-<br>48    | 4y6m<br>46-<br>61    | 5y6m<br>57-<br>75     | 6y6m<br>67-<br>89     | 7y6m<br>77-<br>102   |
| <b>V</b>          | 9m<br>6-<br>12                             | 13m<br>12+-<br>14    | 15m<br>13-<br>17     | 18m<br>15-<br>20     | 2y2m<br>22-<br>29     | 3y2m<br>33-<br>43    | 4y<br>41-<br>54      | 5y<br>51-<br>68       | 6y<br>62-<br>82       | 7y<br>72-<br>96      |
| <b>IV</b>         | 6m<br>3-<br>9                              | 9m<br>6-<br>12       | 13m<br>12+-<br>14    | 15m<br>13-<br>17     | 18m<br>15-<br>20      | 2y2m<br>22-<br>29    | 3y2m<br>33-<br>43    | 4y2m<br>43-<br>57     | 5y2m<br>53-<br>70     | 6y2m<br>63-<br>84    |

|     |      |      |    |     |      |     |      |      |      |      |
|-----|------|------|----|-----|------|-----|------|------|------|------|
| III | 2m   | 5m   | 8m | 11m | 14m  | 20m | 2y2m | 3y2m | 4y2m | 5y   |
|     | 1-   | 3-   | 4- | 9-  | 12+- | 17- | 22-  | 33-  | 43-  | 51-  |
|     | 3    | 8    | 12 | 12  | 16   | 22  | 29   | 43   | 57   | 68   |
| II  |      | 4m   | 6m | 8m  | 13m  | 16m | 20m  | 2y2m | 3y2m | 4y2m |
|     | 0-90 | 2-   | 3- | 4-  | 12+- | 14- | 17-  | 22-  | 33-  | 43-  |
|     | Days | 6    | 9  | 12  | 14   | 18  | 22   | 29   | 43   | 57   |
| I   |      |      | 3m | 4m  | 5m   | 8m  | 13m  | 16m  | 20m  | 2y2m |
|     | 0-60 | 0-90 | 2- | 2-  | 3-   | 4-  | 12+- | 14-  | 17-  | 22-  |
|     | Days | Days | 5  | 6   | 8    | 12  | 14   | 18   | 22   | 29   |

NOTE: Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y) and months(m). Numbers in the second and third rows represent presumptive sentencing ranges in months, or in days if so designated. 12+ equals one year and one day.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by 75 percent.

(3) The following additional times shall be added to the presumptive sentence for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the presumptive sentence determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Five years for any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection.

(b) Three years for any felony defined under any law as a class B felony or with a maximum sentence of ten years, or both, and not covered under (f) of this subsection.

(c) Eighteen months for any felony defined under any law as a class C felony or with a maximum sentence of five years, or both, and not covered under (f) of this subsection.

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both,

any and all firearm enhancements under this subsection shall be twice the amount of the enhancement listed.

(e) Notwithstanding any other provision of law, any and all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall not run concurrently with any other sentencing provisions.

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony.

(g) If the presumptive sentence under this section exceeds the statutory maximum for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender as defined in RCW 9.94A.030.

(4) The following additional times shall be added to the presumptive sentence for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a deadly weapon as defined in this chapter other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the presumptive sentence determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection.

(b) One year for any felony defined under any law as a class B felony or with a maximum sentence of ten years, or both, and not covered under (f) of this subsection.

(c) Six months for any felony defined under any law as a class C felony or with a maximum sentence of five years, or both, and not covered under (f) of this subsection.

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, any and all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed.

(e) Notwithstanding any other provision of law, any and all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall not run concurrently with any other sentencing provisions.



(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony.

(g) If the presumptive sentence under this section exceeds the statutory maximum for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender as defined in RCW 9.94A.030.

(5) The following additional times shall be added to the presumptive sentence if the offender or an accomplice committed the offense while in a county jail or state correctional facility as that term is defined in this chapter and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility as that term is defined in this chapter, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the presumptive sentence determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(a)(1) (i) or (ii) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(a)(1) (iii), (iv), and (v);

(c) Twelve months for offenses committed under RCW 69.50.401(d).

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(6) An additional twenty-four months shall be added to the presumptive sentence for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

(7) An additional two years shall be added to the presumptive sentence for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055.

Sec. 4. RCW 9.94A.360 and 1997 c 338 s 5 are each amended to read as follows:

The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are as follows:

The offender score is the sum of points accrued under this section rounded down to the nearest whole number.

(1) A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed "other current offenses" within the meaning of RCW 9.94A.400.

(2) Class A and sex prior felony convictions shall always be included in the offender score. Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction. Class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction. Serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without committing any crime that subsequently results in a conviction. This subsection applies to both adult and juvenile prior convictions.

(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. If there is no clearly comparable offense under Washington law or the offense is one that is usually considered subject to exclusive federal jurisdiction, the offense shall be scored as a class C felony equivalent if it was a felony under the relevant federal statute.

(4) Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.

(5)(a) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:

(i) Prior offenses which were found, under RCW 9.94A.400(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently or prior juvenile offenses for which sentences were served consecutively, whether those offenses shall be counted as one offense or as separate offenses using the "same criminal conduct" analysis found in RCW 9.94A.400(1)(a), and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used. The current sentencing court may presume that such other prior offenses were not the same criminal conduct from sentences imposed on separate dates, or in separate counties or jurisdictions, or in separate complaints, indictments, or informations;

(ii) In the case of multiple prior convictions for offenses committed before July 1, 1986, for the purpose of computing the offender score, count all adult

convictions served concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. Use the conviction for the offense that yields the highest offender score.

(b) As used in this subsection (5), "served concurrently" means that: (i) The latter sentence was imposed with specific reference to the former; (ii) the concurrent relationship of the sentences was judicially imposed; and (iii) the concurrent timing of the sentences was not the result of a probation or parole revocation on the former offense.

(6) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, count each prior conviction as if the present conviction were for a completed offense.

(7) If the present conviction is for a nonviolent offense and not covered by subsection (11) or (12) of this section, count one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction and 1/2 point for each juvenile prior nonviolent felony conviction.

(8) If the present conviction is for a violent offense and not covered in subsection (9), (10), (11), or (12) of this section, count two points for each prior adult and juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(9) If the present conviction is for Murder 1 or 2, Assault 1, Assault of a Child 1, Kidnapping 1, Homicide by Abuse, or Rape I, count three points for prior adult and juvenile convictions for crimes in these categories, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(10) If the present conviction is for Burglary 1, count prior convictions as in subsection (8) of this section; however count two points for each prior adult Burglary 2 or residential burglary conviction, and one point for each prior juvenile Burglary 2 or residential burglary conviction.

(11) If the present conviction is for a felony traffic offense count two points for each adult or juvenile prior conviction for Vehicular Homicide or Vehicular Assault; for each felony offense or serious traffic offense, count one point for each adult and 1/2 point for each juvenile prior conviction. This subsection shall not apply when additional time is added to a sentence pursuant to RCW 46.61.520(2).

(12) If the present conviction is for a drug offense count three points for each adult prior felony drug offense conviction and two points for each juvenile drug offense. All other adult and juvenile felonies are scored as in subsection (8) of this section if the current drug offense is violent, or as in subsection (7) of this section if the current drug offense is nonviolent.

(13) If the present conviction is for Willful Failure to Return from Furlough, RCW 72.66.060, Willful Failure to Return from Work Release, RCW 72.65.070, or Escape from Community Custody, RCW 72.09.310, count only prior escape

convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point.

(14) If the present conviction is for Escape 1, RCW 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as one point and juvenile prior convictions as 1/2 point.

(15) If the present conviction is for Burglary 2 or residential burglary, count priors as in subsection (7) of this section; however, count two points for each adult and juvenile prior Burglary 1 conviction, two points for each adult prior Burglary 2 or residential burglary conviction, and one point for each juvenile prior Burglary 2 or residential burglary conviction.

(16) If the present conviction is for a sex offense, count priors as in subsections (7) through (15) of this section; however count three points for each adult and juvenile prior sex offense conviction.

(17) If the present conviction is for an offense committed while the offender was under community placement, add one point.

**NEW SECTION.** Sec. 5. A new section is added to chapter 46.6I RCW to read as follows:

(1) Immediately before the court defers prosecution under RCW 10.05.020, dismisses a charge, or orders a sentence for any offense listed in subsection (2) of this section, the court and prosecutor shall verify the defendant's criminal history and driving record. The order shall include specific findings as to the criminal history and driving record. For purposes of this section, the criminal history shall include all previous convictions and orders of deferred prosecution, as reported through the judicial information system or otherwise available to the court or prosecutor, current to within the period specified in subsection (3) of this section before the date of the order. For purposes of this section, the driving record shall include all information reported to the court by the department of licensing.

(2) The offenses to which this section applies are violations of: (a) RCW 46.61.502 or an equivalent local ordinance; (b) RCW 46.61.504 or an equivalent local ordinance; (c) RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug; (d) RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug; and (e) RCW 46.61.5249, 46.61.500, or 9A.36.050, or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522.

(3) The periods applicable to previous convictions and orders of deferred prosecution are: (a) One working day, in the case of previous actions of courts that fully participate in the state judicial information system; and (b) seven calendar days, in the case of previous actions of courts that do not fully participate in the judicial information system. For purposes of this subsection, "fully participate" means regularly providing records to and receiving records from the system by electronic means on a daily basis.

**NEW SECTION. Sec. 6.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.

**NEW SECTION. Sec. 7.** This act takes effect January 1, 1999.

Passed the Senate March 7, 1998.

Passed the House March 5, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

## CHAPTER 212

[Engrossed Substitute Senate Bill 6187]

### DRIVING UNDER THE INFLUENCE--REISSUE FEE INCREASE-- IMPAIRED DRIVING SAFETY ACCOUNT

AN ACT Relating to alcohol; amending RCW 46.20.311 and 46.20.391; adding a new section to chapter 46.68 RCW; and prescribing penalties.

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

**Sec. 1.** RCW 46.20.311 and 1997 c 58 s 807 are each amended to read as follows:

(1)(a) The department shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a fixed period of more than one year, except as specifically permitted under RCW 46.20.342 or other provision of law. Except for a suspension under RCW 46.20.289, 46.20.291(5), or 74.20A.320, whenever the license or driving privilege of any person is suspended by reason of a conviction, a finding that a traffic infraction has been committed, pursuant to chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the suspension shall remain in effect until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, the department shall determine the person's eligibility for licensing based upon the reports provided by the alcoholism agency or probation department designated under RCW 46.61.5056 and shall deny reinstatement until enrollment and participation in an approved program has been established and the person is otherwise qualified. Whenever the license or driving privilege of any person is suspended as a result of certification of noncompliance with a child support order under chapter 74.20A RCW or a residential or visitation order, the suspension shall remain in effect until the person provides a release issued by the department of social and health services stating that the person is in compliance with the order.

(b)(i) The department shall not issue to the person a new, duplicate, or renewal license until the person pays a reissue fee of twenty dollars.

(ii) If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, or is the result of administrative action under RCW 46.20.308, the reissue fee shall be one hundred fifty dollars.

(2)(a) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked, unless the revocation was for a cause which has been removed, is not entitled to have the license or privilege renewed or restored until: ~~((a))~~ (i) After the expiration of one year from the date the license or privilege to drive was revoked; ~~((b))~~ (ii) after the expiration of the applicable revocation period provided by RCW 46.20.3101 or 46.61.5055; ~~((c))~~ (iii) after the expiration of two years for persons convicted of vehicular homicide; or ~~((d))~~ (iv) after the expiration of the applicable revocation period provided by RCW 46.20.265.

(b)(i) After the expiration of the appropriate period, the person may make application for a new license as provided by law together with a reissue fee in the amount of twenty dollars~~((but))~~.

(ii) If the revocation is the result of a violation of RCW 46.20.308, 46.61.502, or 46.61.504, the reissue fee shall be one hundred fifty dollars. If the revocation is the result of a violation of RCW 46.61.502 or 46.61.504, the department shall determine the person's eligibility for licensing based upon the reports provided by the alcoholism agency or probation department designated under RCW 46.61.5056 and shall deny reissuance of a license, permit, or privilege to drive until enrollment and participation in an approved program has been established and the person is otherwise qualified.

(c) Except for a revocation under RCW 46.20.265, the department shall not then issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant the privilege of driving a motor vehicle on the public highways, and until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. For a revocation under RCW 46.20.265, the department shall not issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant that person the privilege of driving a motor vehicle on the public highways.

(3)(a) Whenever the driver's license of any person is suspended pursuant to Article IV of the nonresident violators compact or RCW 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue to the person any new or renewal license until the person pays a reissue fee of twenty dollars.

(b) If the suspension is the result of a violation of the laws of this or any other state, province, or other jurisdiction involving ~~((a))~~ (i) the operation or physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor or drugs, or ~~((b))~~ (ii) the refusal to submit to a chemical test of the driver's blood alcohol content, the reissue fee shall be one hundred fifty dollars.

**NEW SECTION.** Sec. 2. A new section is added to chapter 46.68 RCW to read as follows:

The impaired driving safety account is created in the custody of the state treasurer. All receipts from fees collected under RCW 46.20.311 (1)(b)(ii), (2)(b)(ii), and (3)(b) shall be deposited according to RCW 46.68.041.

Expenditures from this account may be used only to fund projects to reduce impaired driving and to provide funding to local governments for costs associated with enforcing laws relating to driving and hoating while under the influence of intoxicating liquor or any drug. The account is subject to allotment procedures under chapter 43.88 RCW. Moneys in the account may be spent only after appropriation.

**Sec. 3.** RCW 46.68.041 and 1995 2nd sp.s. c 3 s 1 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the department shall forward all funds accruing under the provisions of chapter 46.20 RCW together with a proper identifying, detailed report to the state treasurer who shall deposit such moneys to the credit of the highway safety fund.

(2) Sixty-three percent of each fee collected by the department under RCW 46.20.311 (1)(b)(ii), (2)(b)(ii), and (3)(b) shall be deposited in the impaired driving safety account.

Passed the Senate March 12, 1998.

Passed the House March 10, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

## CHAPTER 213

[Engrossed Senate Bill 6257]

### LOWERING STATUTORY LEVELS FOR LEGAL ALCOHOL INTOXICATION

AN ACT Relating to blood and breath alcohol standards for intoxication; amending RCW 46.20.308, 46.20.3101, 46.61.502, 46.61.503, 46.61.504, 46.61.506, and 88.12.025; creating a new section; prescribing penalties; and providing an effective date.

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

**Sec. 1.** RCW 46.20.308 and 1995 c 332 s 1 are each amended to read as follows:

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

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or the person to have been driving or in actual physical control of a motor vehicle while having alcohol in a concentration ~~(of 0.02 or more)~~ in violation of RCW 46.61.503 in his or her system and being

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

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

(b) His or her license, permit, or privilege to drive will be suspended, revoked, denied, or placed in probationary status if the test is administered and the test indicates the alcohol concentration of the person's breath or blood is ~~((0.10))~~ 0.08 or more, in the case of a person age twenty-one or over, or ~~((0.02 or more))~~ in violation of RCW 46.61.502, 46.61.503, or 46.61.504 in the case of a person under age twenty-one; and

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

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

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

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

(6) If, after arrest and after the other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of the person's breath or blood is ~~((0.10))~~ 0.08 or more if the person is age twenty-one or over, or is ~~((0.02 or more))~~ in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is under the age of twenty-one, or the person refuses to



submit to a test, the arresting officer or other law enforcement officer at whose direction any test has been given, or the department, where applicable, if the arrest results in a test of the person's blood, shall:

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

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

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

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

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

(i) That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or was under the age of twenty-one years and had been driving or was in actual physical control of a motor vehicle while having an alcohol concentration (~~(of 0.02 or more)~~) in violation of RCW 46.61.503;

(ii) That after receipt of the warnings required by subsection (2) of this section the person refused to submit to a test of his or her blood or breath, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was (~~(0.10)~~) 0.08 or more if the person is age twenty-one or over, or was (~~(0.02 or more)~~) in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is under the age of twenty-one; and

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

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

(8) A person receiving notification under subsection (6)(b) of this section may, within thirty days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of one hundred dollars as part of the request. If the request is mailed, it must be postmarked within thirty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required one hundred dollar fee, the department shall afford the person an opportunity for a hearing. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within sixty days following the arrest or following the date notice has been given in the event notice is given by the department following a blood test, unless otherwise agreed to by the department and the person, in which case the action by the department shall be stayed, and any valid temporary license marked under subsection (6)(c) of this section extended, if the person is otherwise eligible for licensing. For the purposes of this section, the scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration ~~((of 0.02 or more))~~ in violation of RCW 46.61.503 and was under the age of twenty-one, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered without express consent as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was ~~((0.10))~~ 0.08 or more if the person was age twenty-one or over at the time of the arrest, or was ~~((0.02 or more))~~ in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person was under the age of twenty-one at the time of the arrest. The sworn report or report under a declaration authorized by RCW [9]A.72.085 submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration ~~((of 0.02 or more))~~ in violation of RCW 46.61.503 and was under the age of twenty-one and that the officer complied with the requirements of this section.

A hearing officer shall conduct the hearing, may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer oaths to witnesses. The hearing officer shall not issue a subpoena for the attendance of a witness at the request of the person unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The sworn report or report under a declaration authorized by RCW 9A.72.085 of the law enforcement officer and any other evidence accompanying the report shall be admissible without further evidentiary foundation and the certifications authorized by the criminal rules for courts of limited jurisdiction shall be admissible without further evidentiary foundation. The person may be represented by counsel, may question witnesses, may present evidence, and may testify. The department shall order that the suspension, revocation, denial, or placement in probationary status either be rescinded or sustained.

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

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

section, for the period of the stay. If a deferred prosecution treatment plan is not recommended in the report made under RCW 10.05.050, or if treatment is rejected by the court, or if the person declines to accept an offered treatment plan, or if the person violates any condition imposed by the court, then the court shall immediately direct the department to cancel the stay and any temporary marked license or extension of a temporary license issued under this subsection.

A suspension, revocation, or denial imposed under this section, other than as a result of a breath test refusal, shall be stayed if the person is accepted for deferred prosecution as provided in chapter 10.05 RCW for the incident upon which the suspension, revocation, or denial is based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension, revocation, or denial reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension, revocation, or denial canceled.

(1) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, revoked, or denied, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license.

**Sec. 2.** RCW 46.20.3101 and 1995 c 332 s 3 are each amended to read as follows:

Pursuant to RCW 46.20.308, the department shall suspend, revoke, or deny the arrested person's license, permit, or privilege to drive as follows:

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

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

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

(2) In the case of an incident where a person has submitted to or been administered a test or tests indicating that the alcohol concentration of the person's breath or blood was ~~((0.10))~~ 0.08 or more:

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

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

(3) In the case of an incident where a person under age twenty-one has submitted to or been administered a test or tests indicating that the alcohol

concentration of the person's breath or blood was ~~((0.02 or more))~~ in violation of RCW 46.61.502, 46.61.503, or 46.61.504:

- (a) For a first incident within five years, suspension or denial for ninety days;
- (b) For a second or subsequent incident within five years, revocation or denial for one year or until the person reaches age twenty-one, whichever is longer.

**Sec. 3.** RCW 46.61.502 and 1994 c 275 s 2 are each amended to read as follows:

(1) A person is guilty of driving while under the influence of intoxicating liquor or any drug if the person drives a vehicle within this state:

(a) And the person has, within two hours after driving, an alcohol concentration of ~~((0.10))~~ 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) While the person is under the influence of or affected by intoxicating liquor or any drug; or

(c) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state shall not constitute a defense against a charge of violating this section.

(3) It is an affirmative defense to a violation of subsection (1)(a) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be ~~((0.10))~~ 0.08 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4) Analyses of blood or breath samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had an alcohol concentration of ~~((0.10))~~ 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(b) or (c) of this section.

(5) A violation of this section is a gross misdemeanor.

**Sec. 4.** RCW 46.61.503 and 1995 c 332 s 2 are each amended to read as follows:

(1) Notwithstanding any other provision of this title, a person is guilty of driving a motor vehicle after consuming alcohol if the person operates a motor vehicle within this state and the person:

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

(b) Has, within two hours after operating the motor vehicle, an alcohol concentration of ~~((0.02 or more))~~ at least 0.02 but less than the concentration specified in RCW 46.61.502, as shown by analysis of the person's breath or blood made under RCW 46.61.506.

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

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

(4) A violation of this section is a misdemeanor.

**Sec. 5.** RCW 46.61.504 and 1994 c 275 s 3 are each amended to read as follows:

(1) A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if the person has actual physical control of a vehicle within this state:

(a) And the person has, within two hours after being in actual physical control of the vehicle, an alcohol concentration of ~~((0.10))~~ 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) While the person is under the influence of or affected by intoxicating liquor or any drug; or

(c) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state does not constitute a defense against any charge of violating this section. No person may be convicted under this section if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.

(3) It is an affirmative defense to a violation of subsection (1)(a) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be ~~((0.10))~~ 0.08 or more within two hours after being in such control. The court shall not admit evidence of this defense unless the defendant notifies the

prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4) Analyses of blood or breath samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in such control, a person had an alcohol concentration of ~~((0.10))~~ 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(b) or (c) of this section.

(5) A violation of this section is a gross misdemeanor.

**Sec. 6.** RCW 46.61.506 and 1995 c 332 s 18 are each amended to read as follows:

(1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the person's alcohol concentration is less than ~~((0.10))~~ 0.08, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug.

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

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

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

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

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

**Sec. 7.** RCW 88.12.025 and 1993 c 244 s 8 are each amended to read as follows:

(1) It shall be unlawful for any person to operate a vessel in a reckless manner.

(2) It shall be a violation for a person to operate a vessel while under the influence of intoxicating liquor or any drug. A person is considered to be under the influence of intoxicating liquor or any drug if:

(a) The person has ~~((0-10))~~ 0.08 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of the person's breath made under RCW 46.61.506; or

(b) The person has ~~((0-10))~~ 0.08 percent or more by weight of alcohol in the person's blood, as shown by analysis of the person's blood made under RCW 46.61.506; or

(c) The person is under the influence of or affected by intoxicating liquor or any drug; or

(d) The person is under the combined influence of or affected by intoxicating liquor and any drug.

The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section. A person cited under this subsection may upon request be given a breath test for breath alcohol or may request to have a blood sample taken for blood alcohol analysis. An arresting officer shall administer field sobriety tests when circumstances permit.

(3) A violation of this section is a misdemeanor, punishable as provided under RCW 9.92.030. In addition, the court may order the defendant to pay restitution for any damages or injuries resulting from the offense.

**NEW SECTION.** **Sec. 8.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.

**NEW SECTION.** **Sec. 9.** This act takes effect January 1, 1999.

Passed the Senate March 7, 1998.

Passed the House March 5, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.



**CHAPTER 214****[Engrossed Second Substitute Senate Bill 6293]  
DRUNK DRIVING—INCREASING PENALTIES**

AN ACT Relating to drunk driving; amending 46.65.070, 46.65.080, and 46.65.100; reenacting and amending RCW 46.61.5055; adding a new section to chapter 46.61 RCW; prescribing penalties; and providing an effective date.

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

**Sec. 1.** RCW 46.61.5055 and 1997 c 229 s 11 and 1997 c 66 s 14 are each reenacted and amended to read as follows:

(1) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within five years shall be punished as follows:

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

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

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

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

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

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

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

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

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

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

(i) By imprisonment for not less than thirty days nor more than one year (~~Thirty days of the imprisonment~~) and sixty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Thirty days of imprisonment and sixty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

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

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

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

(i) By imprisonment for not less than forty-five days nor more than one year (~~Forty five days of the imprisonment~~) and ninety days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The

county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Forty-five days of imprisonment and ninety days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

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

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

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

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

(i) By imprisonment for not less than ninety days nor more than one year (Ninety days of the imprisonment) and one hundred twenty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Ninety days of imprisonment and one hundred twenty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

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

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

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

(i) By imprisonment for not less than one hundred twenty days nor more than one year (~~One hundred twenty days of the imprisonment~~) and one hundred fifty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. One hundred twenty days of imprisonment and one hundred fifty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

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

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

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

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

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

(7)(a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes less than one year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding ~~((two))~~ five years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock or other biological or technical device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

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

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

(8) For purposes of this section:

(a) "Electronic home monitoring" shall not be considered confinement as defined in RCW 9.94A.030:

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

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

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

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

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

(v) A conviction for a violation of RCW 46.61.5249 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

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

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

(viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522~~(-)~~; and

~~((b))~~ (c) "Within five years" means that the arrest for a prior offense occurred within five years of the arrest for the current offense.

**Sec. 2.** RCW 46.65.070 and 1990 c 250 s 62 are each amended to read as follows:

No license to operate motor vehicles in Washington shall be issued to an habitual offender (1) for a period of ~~((five))~~ seven years from the date of the license revocation except as provided in RCW 46.65.080, and (2) until the privilege of such person to operate a motor vehicle in this state has been restored by the department of licensing as provided in this chapter.

**Sec. 3.** RCW 46.65.080 and 1979 c 158 s 181 are each amended to read as follows:

At the end of ~~((two))~~ four years, the habitual offender may petition the department of licensing for the return of his operator's license and upon good and sufficient showing, the department of licensing may, wholly or conditionally, reinstate the privilege of such person to operate a motor vehicle in this state.

**Sec. 4.** RCW 46.65.100 and 1979 c 158 s 182 are each amended to read as follows:

At the expiration of ~~((five))~~ seven years from the date of any final order finding a person to be an habitual offender and directing him not to operate a motor vehicle in this state, such person may petition the department of licensing for restoration of his privilege to operate a motor vehicle in this state. Upon receipt of such petition, and for good cause shown, the department of licensing shall restore to such person the privilege to operate a motor vehicle in this state upon such terms and conditions as the department of licensing may prescribe, subject to the provisions of chapter 46.29 RCW and such other provisions of law relating to the issuance or revocation of operators' licenses.

**NEW SECTION.** **Sec. 5.** A new section is added to chapter 46.61 RCW to read as follows:

(1) A defendant who is arrested for an offense involving driving while under the influence as defined in RCW 46.61.502, driving under age twenty-one after consuming alcohol as defined in RCW 46.61.503, or being in physical control of a vehicle while under the influence as defined in RCW 46.61.504, shall be

required to appear in person before a magistrate within one judicial day after the arrest if the defendant is served with a citation or complaint at the time of the arrest.

(2) A defendant who is charged by citation, complaint, or information with an offense involving driving while under the influence as defined in RCW 46.61.502, driving under age twenty-one after consuming alcohol as defined in RCW 46.61.503, or being in physical control of a vehicle while under the influence as defined in RCW 46.61.504, and who is not arrested, shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information.

(3) At the time of an appearance required by this section, the court shall determine the necessity of imposing conditions of pretrial release according to the procedures established by court rule for a preliminary appearance or an arraignment.

(4) Appearances required by this section are mandatory and may not be waived.

**NEW SECTION. Sec. 6.** This act takes effect January 1, 1999.

Passed the Senate March 9, 1998.

Passed the House March 5, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

## CHAPTER 215

[Engrossed Substitute Senate Bill 6408]

### ALCOHOL VIOLATORS—INCREASING PENALTIES IF THERE WERE PASSENGERS

AN ACT Relating to penalties for alcohol violators; reenacting and amending RCW 46.61.5055; and prescribing penalties.

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

**Sec. 1.** RCW 46.61.5055 and 1997 c 229 s 11 and 1997 c 66 s 14 are each reenacted and amended to read as follows:

(1) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within five years shall be punished as follows:

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

(i) By imprisonment for not less than one day nor more than one year. Twenty-four consecutive hours of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the

court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider the following:

(a) Whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property; and

(b) Whether the person was driving or in physical control of a vehicle with one or more passengers at the time of the offense.

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

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

(7)(a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes less than one year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding two years. The court shall impose conditions of probation that

include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock or other biological or technical device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

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

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

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

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

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

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

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

(v) A conviction for a violation of RCW 46.61.5249 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

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

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

(viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522.

(b) "Within five years" means that the arrest for a prior offense occurred within five years of the arrest for the current offense.

Passed the Senate March 12, 1998.

Passed the House March 11, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

## CHAPTER 216

[Substitute Senate Bill 6751]

### PERSONS WITH DEVELOPMENTAL DISABILITIES— CHOICE OF RESIDENCE AND SERVICE

AN ACT Relating to stabilizing long-term care for persons with developmental disabilities living in the community and in residential habilitation centers; amending RCW 71A.10.020, 71A.16.010, and 71A.16.030; adding a new section to chapter 71A.10 RCW; adding new sections to chapter 71A.12 RCW; adding a new section to chapter 71A.20 RCW; providing an expiration date; and declaring an emergency.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 71A.10 RCW to read as follows:

It is the intent of the legislature to affirm its long-time commitment to secure for eligible persons with developmental disabilities in partnership with their families or legal guardians the opportunity to choose where they live. Consistent with this commitment, the legislature supports the existence of a complete spectrum of options, including community support services and residential habilitation centers.

The choice of service options must be supported by state policy, whether the choice is residential habilitation centers or community support services. The intent of the legislature is to ensure choice of service options to persons with developmental disabilities allowing, to the maximum extent possible, that they not have to leave their home or community.

The legislature supports the respective roles that both residential habilitation centers and community support services play in providing options and resources for people with developmental disabilities and their families who need services. The legislature recognizes that services must ensure credibility, responsiveness, and reasonable quality, whether they are state, county, or community funded.

Sec. 2. RCW 71A.10.020 and 1988 c 176 s 102 are each amended to read as follows:

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

(1) "Community residential support services," or "community support services," and "in-home services" means one or more of the services listed in RCW 71A.12.040.

(2) "Department" means the department of social and health services.

~~((2))~~ (3) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to the individual. By January 1, 1989, the department shall promulgate rules which define neurological or other conditions in a way that is not limited to intelligence quotient scores as the sole ~~((determinate {determinant}))~~ determinant of these conditions, and notify the legislature of this action.

~~((3))~~ (4) "Eligible person" means a person who has been found by the secretary under RCW 71A.16.040 to be eligible for services.

~~((4))~~ (5) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and to raise their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy.

~~((5))~~ (6) "Legal representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within the scope of the limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

~~((6))~~ (7) "Notice" or "notification" of an action of the secretary means notice in compliance with RCW 71A.10.060.

~~((7))~~ (8) "Residential habilitation center" means a state-operated facility for persons with developmental disabilities governed by chapter 71A.20 RCW.

~~((8))~~ (9) "Secretary" means the secretary of social and health services or the secretary's designee.

~~((9))~~ (10) "Service" or "services" means services provided by state or local government to carry out this title.

(11) "Vacancy" means an opening at a residential habilitation center, which when filled, would not require the center to exceed its biannually budgeted capacity.

Sec. 3. RCW 71A.16.010 and 1988 c 176 s 401 are each amended to read as follows:

(1) It is the intention of the legislature in this chapter to establish a single point of referral for persons with developmental disabilities and their families so that they may have a place of entry and continuing contact for services authorized

under this title to persons with developmental disabilities. Eligible persons with developmental disabilities, whether they live in the community or residential habilitation centers, should have the opportunity to choose where they live.

(2) Until June 30, 2003, and subject to subsection (3) of this section, if there is a vacancy in a residential habilitation center, the department shall offer admittance to the center to any eligible adult, or eligible adolescent on an exceptional case-by-case basis, with developmental disabilities if his or her assessed needs require the funded level of resources that are provided by the center.

(3) The department shall not offer a person admittance to a residential habilitation center under subsection (2) of this section unless the department also offers the person appropriate community support services listed in RCW 71A.12.040.

(4) Community support services offered under subsection (3) of this section may only be offered using funds specifically designated for this purpose in the state operating budget. When these funds are exhausted, the department may not offer admittance to a residential habilitation center, or community support services under this section.

(5) Nothing in this section shall be construed to create an entitlement to state services for persons with developmental disabilities.

(6) Subsections (2) through (6) of this section expire June 30, 2003.

Sec. 4. RCW 71A.16.030 and 1988 c 176 s 403 are each amended to read as follows:

(1) The department will develop an outreach program to ensure that any eligible person with developmental disabilities services in homes, the community, and residential habilitation centers will be made aware of these services. This subsection (1) expires June 30, 2003.

(2) The secretary shall establish a single procedure for persons to apply for a determination of eligibility for services provided to persons with developmental disabilities.

~~((2))~~ (3) Until June 30, 2003, the procedure set out under subsection (1) of this section must require that all applicants and all persons with developmental disabilities currently receiving services from the division of developmental disabilities within the department be given notice of the existence and availability of residential habilitation center and community support services. For genuine choice to exist, people must know what the options are. Available options must be clearly explained, with services customized to fit the unique needs and circumstances of developmentally disabled clients and their families. Choice of providers and design of services and supports will be determined by the individual in conjunction with the department. When the person cannot make these choices, the person's legal guardian may make them, consistent with chapter 11.88 or 11.92 RCW. This subsection expires June 30, 2003.

(4) An application may be submitted by a person with a developmental disability, by the legal representative of a person with a developmental disability,

or by any other person who is authorized by rule of the secretary to submit an application.

**NEW SECTION.** **Sec. 5.** A new section is added to chapter 71A.12 RCW to read as follows:

(1) The legislature recognizes that residential habilitation center and community support services should be available to each eligible person with developmental disabilities in our state within appropriated funds.

(2) The legislature recognizes that there have been substantially increasing demands for all of these services. Therefore, the legislature believes that any reductions in the capacity of these services could jeopardize a needed balance in the developmental disabilities system. The legislature intends to stabilize the capacity of community support services and residential habilitation center services. The capacity of the residential habilitation centers shall not be reduced below the capacity provided for in chapter 149, Laws of 1997, subject to budget direction from the governor or reductions needed to adhere to an agreement with the federal department of justice regarding Fircrest School. The capacity of community support services shall not be reduced below the capacity provided for by the appropriation specified in chapter 149, Laws of 1997, subject to budget direction from the governor. If the direction from the governor requires reductions in the division of developmental disabilities, the budgets of both the residential habilitation centers and community support services shall be considered.

(3) If such capacity is not needed for current clients of the department, any vacancies that may occur in community support services or residential habilitation center services shall be used to expand services to eligible persons with developmental disabilities not now receiving services. If a vacancy is created it will be made available to any eligible individual who is seeking and desires the services of a residential habilitation center under RCW 71A.16.010. If residential habilitation center capacity is not being used for permanent residents, the department shall make any residential habilitation center vacancies available for respite care and any other services needed to care for this population in residential habilitation centers, other than permanent residents.

**NEW SECTION.** **Sec. 6.** A new section is added to chapter 71A.20 RCW to read as follows:

As a means of implementing a choice-oriented system for people with developmental disabilities, staff of residential habilitation centers will continue to increase vocational and community access for current residents. Likewise, specialized residential habilitation services will be more easily accessed by community residents within available funds.

**NEW SECTION.** **Sec. 7.** A new section is added to chapter 71A.12 RCW to read as follows:

The department shall conduct an analysis whereby it identifies all persons with developmental disabilities who are eligible for services under Title 71A

RCW, and whether they are served, unserved, or underserved. The department will gather data on the services and supports required by this population, their families or their guardians, and the cost of providing these services. This analysis will include assessing services such as those at residential habilitation centers, those community support services listed in RCW 71A.12.040, and including, but not limited to, supported employment, family support, post high school transition programs, crisis intervention services, supports for persons who have a developmental disability and also a mental illness, alternative uses for residential habilitation centers, community vocational services, respite care, specialized medical treatment, and appropriate placements for persons with developmental disabilities who are also offenders. The assessment shall be done with the participation of the developmental disabilities stakeholders work group. The assessment will commence no later than July 1, 1998.

The assessment data will not be used to determine or allocate services for individual people. It will be used by the department, with the participation of the developmental disabilities stakeholder work group, to develop a long-term strategic plan. The plan will include three phases, the first one beginning December 1, 1998; the second beginning December 1, 2000; and the third beginning December 1, 2002. For each phase the department will provide incremental data and assessment of programs, services, and funding for persons with developmental disabilities and their families. For each phase the plan must also include budget and statutory recommendations intended to secure for all persons with developmental disabilities the opportunity to choose where they live, and shall support the existence of a complete spectrum of options including community support services, and residential habilitation centers that are consistent with those needs.

**NEW SECTION. Sec. 8.** A new section is added to chapter 71A.12 RCW to read as follows:

For the purposes of section 7 of this act, the developmental disabilities stakeholder work group is the division of developmental disabilities strategies for the future stakeholder work group established by the secretary in 1997 to develop recommendations on future directions and strategies for service delivery improvement, resulting in an agreement on the directions the department should follow in considering the respective roles of the residential habilitation centers and community support services, including a focus on the resources for people in need of services.

**NEW SECTION. Sec. 9.** Sections 1 and 5 through 8 of this act expire June 30, 2003.

**NEW SECTION. Sec. 10.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.



Passed the Senate March 12, 1998.  
Passed the House March 11, 1998.  
Approved by the Governor March 30, 1998.  
Filed in Office of Secretary of State March 30, 1998.

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## CHAPTER 217

[Substitute House Bill 1072]

### INTERCEPTION OF COMMUNICATIONS—REVISIONS

AN ACT Relating to interception, transmission, recording, or disclosure of communications; amending RCW 9.73.095 and 9.73.120; adding a new section to chapter 9.73 RCW; creating a new section; and prescribing penalties.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 9.73 RCW to read as follows:

(1) As used in this section:

(a) "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception, including the use of such connection in a switching station, furnished or operated by any person engaged in providing or operating such facilities for the transmission of intrastate, interstate, or foreign communications, and such term includes any electronic storage of such communication.

(b) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system, but does not include:

(i) Any wire or oral communication;

(ii) Any communication made through a tone-only paging device; or

(iii) Any communication from a tracking device.

(c) "Electronic communication service" means any service that provides to users thereof the ability to send or receive wire or electronic communications.

(d) "Pen register" means a device that records or decodes electronic or other impulses that identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but such term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.

(e) "Trap and trace device" means a device that captures the incoming electronic or other impulses that identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

(2) No person may install or use a pen register or trap and trace device without a prior court order issued under this section except as provided under subsection (6) of this section or RCW 9.73.070.

(3) A law enforcement officer may apply for and the superior court may issue orders and extensions of orders authorizing the installation and use of pen registers and trap and trace devices as provided in this section. The application shall be under oath and shall include the identity of the officer making the application and the identity of the law enforcement agency conducting the investigation. The applicant must certify that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

(4) If the court finds that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation and finds that there is probable cause to believe that the pen register or trap and trace device will lead to obtaining evidence of a crime, contraband, fruits of crime, things criminally possessed, weapons, or other things by means of which a crime has been committed or reasonably appears about to be committed, or will lead to learning the location of a person who is unlawfully restrained or reasonably believed to be a witness in a criminal investigation or for whose arrest there is probable cause, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device. The order shall specify:

(a) The identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;

(b) The identity, if known, of the person who is the subject of the criminal investigation;

(c) The number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and

(d) A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.

The order shall direct, if the applicant has requested, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device. An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed sixty days. An extension of the original order may only be granted upon: A new application for an order under subsection (3) of this section; and a showing that there is a probability that the information or items sought under this subsection are more likely to be obtained under the extension than under the original order. No extension beyond the first extension shall be granted unless: There is a showing that there is a high probability that the information or items sought under this subsection are much more likely to be obtained under the second or subsequent extension than under the original order; and there are extraordinary circumstances such as a direct and immediate danger

of death or serious bodily injury to a law enforcement officer. The period of extension shall be for a period not to exceed sixty days.

An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that the order be sealed until otherwise ordered by the court and that the person owning or leasing the line to which the pen register or trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber or to any other person, unless or until otherwise ordered by the court.

(5) Upon the presentation of an order, entered under subsection (4) of this section, by an officer of a law enforcement agency authorized to install and use a pen register under this chapter, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish such law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in subsection (4) of this section.

Upon the request of an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install such device forthwith on the appropriate line and shall furnish such law enforcement officer all additional information, facilities, and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such installation and assistance is directed by a court order as provided in subsection (4) of this section. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of a law enforcement agency, designated in the court order, at reasonable intervals during regular business hours for the duration of the order.

A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this subsection shall be reasonably compensated by the law enforcement agency that requests the facilities or assistance for such reasonable expenses incurred in providing such facilities and assistance.

No cause of action shall lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this section. A good faith reliance on a court order under this section, a request pursuant to this section, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action brought under this chapter or any other law.

(6)(a) Notwithstanding any other provision of this chapter, a law enforcement officer and a prosecuting attorney or deputy prosecuting attorney who jointly and reasonably determine that there is probable cause to believe that an emergency situation exists that involves immediate danger of death or serious bodily injury to any person that requires the installation and use of a pen register or a trap and trace device before an order authorizing such installation and use can, with due diligence, be obtained, and there are grounds upon which an order could be entered under this chapter to authorize such installation and use, may have installed and use a pen register or trap and trace device if, within forty-eight hours after the installation has occurred, or begins to occur, an order approving the installation or use is issued in accordance with subsection (4) of this section. In the absence of an authorizing order, such use shall immediately terminate when the information sought is obtained, when the application for the order is denied or when forty-eight hours have lapsed since the installation of the pen register or trap and trace device, whichever is earlier. If an order approving the installation or use is not obtained within forty-eight hours, any information obtained is not admissible as evidence in any legal proceeding. The knowing installation or use by any law enforcement officer of a pen register or trap and trace device pursuant to this subsection without application for the authorizing order within forty-eight hours of the installation shall constitute a violation of this chapter and be punishable as a gross misdemeanor. A provider of a wire or electronic service, landlord, custodian, or other person who furnished facilities or technical assistance pursuant to this subsection shall be reasonably compensated by the law enforcement agency that requests the facilities or assistance for such reasonable expenses incurred in providing such facilities and assistance.

(b) A law enforcement agency that authorizes the installation of a pen register or trap and trace device under this subsection (6) shall file a monthly report with the administrator for the courts. The report shall indicate the number of authorizations made, the date and time of each authorization, whether a court authorization was sought within forty-eight hours, and whether a subsequent court authorization was granted.

**Sec. 2.** RCW 9.73.095 and 1996 c 197 s 1 are each amended to read as follows:

(1) RCW 9.73.030 through 9.73.080 and section 1 of this act shall not apply to employees of the department of corrections in the following instances: Intercepting, recording, or divulging any telephone calls from an inmate or resident of a state correctional facility; or intercepting, recording, or divulging any monitored nontelephonic conversations in inmate living units, cells, rooms, dormitories, and common spaces where inmates may be present. For the purposes of this section, "state correctional facility" means a facility that is under the control and authority of the department of corrections, and used for the incarceration, treatment, or rehabilitation of convicted felons.

(2) All personal calls made by inmates shall be collect calls only. The calls will be "operator announcement" type calls. The operator shall notify the receiver

of the call that the call is coming from a prison inmate, and that it will be recorded and may be monitored.

(3) The department of corrections shall adhere to the following procedures and restrictions when intercepting, recording, or divulging any telephone calls from an inmate or resident of a state correctional facility as provided for by this section. The department shall also adhere to the following procedures and restrictions when intercepting, recording, or divulging any monitored nontelephonic conversations in inmate living units, cells, rooms, dormitories, and common spaces where inmates may be present:

(a) Unless otherwise provided for in this section, after intercepting or recording any conversation, only the superintendent and his or her designee shall have access to that recording.

(b) The contents of any intercepted and recorded conversation shall be divulged only as is necessary to safeguard the orderly operation of the correctional facility, in response to a court order, or in the prosecution or investigation of any crime.

(c) All conversations that are recorded under this section, unless being used in the ongoing investigation or prosecution of a crime, or as is necessary to assure the orderly operation of the correctional facility, shall be destroyed one year after the intercepting and recording.

(4) So as to safeguard the sanctity of the attorney-client privilege, the department of corrections shall not intercept, record, or divulge any conversation between an inmate or resident and an attorney. The department shall develop policies and procedures to implement this section. The department's policies and procedures implemented under this section shall also recognize the privileged nature of confessions made by an offender to a member of the clergy or a priest in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs as provided in RCW 5.60.060(3).

(5) The department shall notify in writing all inmates, residents, and personnel of state correctional facilities that their nontelephonic conversations may be intercepted, recorded, or divulged in accordance with the provisions of this section.

(6) The department shall notify all visitors to state correctional facilities who may enter inmate living units, cells, rooms, dormitories, or common spaces where inmates may be present, that their conversations may be intercepted, recorded, or divulged in accordance with the provisions of this section. The notice required under this subsection shall be accomplished through a means no less conspicuous than a general posting in a location likely to be seen by visitors entering the facility.

**Sec. 3.** RCW 9.73.120 and 1989 c 271 s 207 are each amended to read as follows:

(1) Within thirty days after the expiration of an authorization or an extension or renewal thereof issued pursuant to RCW 9.73.090(2) as now or hereafter

amended, the issuing or denying judge shall make a report to the administrator for the courts stating that:

- (a) An authorization, extension or renewal was applied for;
- (b) The kind of authorization applied for;
- (c) The authorization was granted as applied for, was modified, or was denied;
- (d) The period of recording authorized by the authorization and the number and duration of any extensions or renewals of the authorization;
- (e) The offense specified in the authorization or extension or renewal of authorization;
- (f) The identity of the person authorizing the application and of the investigative or law enforcement officer and agency for whom it was made;
- (g) Whether an arrest resulted from the communication which was the subject of the authorization; and
- (h) The character of the facilities from which or the place where the communications were to be recorded.

(2) In addition to reports required to be made by applicants pursuant to federal law, all judges of the superior court authorized to issue authority pursuant to this chapter shall make annual reports on the operation of this chapter to the administrator for the courts. The reports made under this subsection must include information on authorizations for the installation and use of pen registers and trap and trace devices under section 1 of this act. The reports by the judges shall contain (a) the number of applications made; (b) the number of authorizations issued; (c) the respective periods of such authorizations; (d) the number and duration of any renewals thereof; (e) the crimes in connection with which the communications or conversations were sought; (f) the names of the applicants; and (g) such other and further particulars as the administrator for the courts may require, except that the administrator for the courts shall not require the reporting of information that might lead to the disclosure of the identity of a confidential informant.

The chief justice of the supreme court shall annually report to the governor and the legislature on such aspects of the operation of this chapter as ~~((he deems))~~ appropriate including any recommendations ~~((he may care to make))~~ as to legislative changes or improvements to effectuate the purposes of this chapter and to assure and protect individual rights.

**NEW SECTION.** Sec. 4. If this act mandates an increased level of service by local governments, the local government may, under RCW 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the legislature. The claims shall be subject to verification by the office of financial management.

Passed the House March 9, 1998.

Passed the Senate March 5, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

**CHAPTER 218**

[Substitute House Bill 1083]

**USE OF DEPARTMENT OF LICENSING RECORDS IN CRIMINAL PROSECUTIONS**

AN ACT Relating to use of department of licensing records in criminal prosecutions; and amending RCW 46.52.120.

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

**Sec. 1.** RCW 46.52.120 and 1993 c 501 s 12 are each amended to read as follows:

(1) The director shall keep a case record on every motor vehicle driver licensed under the laws of this state, together with information on each driver, showing all the convictions and findings of traffic infractions certified by the courts, together with an index cross-reference record of each accident reported relating to such individual with a brief statement of the cause of the accident. The chief of the Washington state patrol shall furnish the index cross-reference record to the director, with reference to each driver involved in the reported accidents.

(2) The records shall be for the confidential use of the director, the chief of the Washington state patrol, the director of the Washington traffic safety commission, and for such police officers or other cognizant public officials as may be designated by law. Such case records shall not be ~~((offered as))~~ admitted into evidence in any court, except where relevant to the prosecution or defense of a criminal charge, or in case appeal is taken from the order of the director, suspending, revoking, canceling, or refusing a vehicle driver's license.

(3) The director shall tabulate and analyze vehicle driver's case records and suspend, revoke, cancel, or refuse a vehicle driver's license to a person when it is deemed from facts contained in the case record of such person that it is for the best interest of public safety that such person be denied the privilege of operating a motor vehicle. Whenever the director orders the vehicle driver's license of any such person suspended, revoked, or canceled, or refuses the issuance of a vehicle driver's license, such suspension, revocation, cancellation, or refusal is final and effective unless appeal from the decision of the director is taken as provided by law.

Passed the House March 9, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

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**CHAPTER 219**

[House Bill 1165]

**HOMICIDE AND ASSAULT BY WATERCRAFT**

AN ACT Relating to homicide or assault by watercraft; amending RCW 88.12.010; reenacting and amending RCW 9.94A.320; adding new sections to chapter 88.12 RCW; and prescribing penalties.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 88.12 RCW to read as follows:

(1) When the death of any person ensues within three years as a proximate result of injury proximately caused by the operating of any vessel by any person, the operator is guilty of homicide by watercraft if he or she was operating the vessel:

(a) While under the influence of intoxicating liquor or any drug, as defined by RCW 88.12.025;

(b) In a reckless manner; or

(c) With disregard for the safety of others.

(2) When the death is caused by a skier towed by a vessel, the operator of the vessel is not guilty of homicide by watercraft.

(3) A violation of this section is punishable as a class A felony according to chapter 9A.20 RCW.

**NEW SECTION.** Sec. 2. A new section is added to chapter 88.12 RCW to read as follows:

(1) "Serious bodily injury" means bodily injury which involves a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.

(2) A person is guilty of assault by watercraft if he or she operates any vessel:

(a) In a reckless manner, and this conduct is the proximate cause of serious bodily injury to another; or

(b) While under the influence of intoxicating liquor or any drug, as defined by RCW 88.12.025, and this conduct is the proximate cause of serious bodily injury to another.

(3) When the injury is caused by a skier towed by a vessel, the operator of the vessel is not guilty of assault by watercraft.

(4) A violation of this section is punishable as a class B felony according to chapter 9A.20 RCW.

**NEW SECTION.** Sec. 3. A new section is added to chapter 88.12 RCW to read as follows:

A person convicted under section 1 or 2 of this act shall, as a condition of community supervision imposed under RCW 9.94A.383 or community placement imposed under RCW 9.94A.120(9), complete a diagnostic evaluation by an alcohol or drug dependency agency approved by the department of social and health services or a qualified probation department, defined under RCW 46.61.516, that has been approved by the department of social and health services. If the person is found to have an alcohol or drug problem that requires treatment, the person shall complete treatment in a program approved by the department of social and health services under chapter 70.96A RCW. If the person is found not to have an alcohol or drug problem that requires treatment, he or she shall complete a course in an information school approved by the department of social and health services under chapter 70.96A RCW. The convicted person shall pay



all costs for any evaluation, education, or treatment required by this section, unless the person is eligible for an existing program offered or approved by the department of social and health services. Nothing in chapter . . . , Laws of 1998 (this act) requires the addition of new treatment or assessment facilities nor affects the department of social and health services use of existing programs and facilities authorized by law.

**Sec. 4.** RCW 9.94A.320 and 1997 c 365 s 4, 1997 c 346 s 3, 1997 c 340 s 1, 1997 c 338 s 51, 1997 c 266 s 15, and 1997 c 120 s 5 are each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

|      |  |
|------|--|
| XV   | Aggravated Murder 1 (RCW 10.95.020)  |
| XIV  | Murder 1 (RCW 9A.32.030)   |
|      | Homicide by abuse (RCW 9A.32.055)  |
|      | Malicious explosion 1 (RCW 70.74.280(1))   |
| XIII | Murder 2 (RCW 9A.32.050)   |
|      | Malicious explosion 2 (RCW 70.74.280(2))   |
|      | Malicious placement of an explosive 1 (RCW 70.74.270(1))   |
| XII  | Assault 1 (RCW 9A.36.011)  |
|      | Assault of a Child 1 (RCW 9A.36.120)   |
|      | Rape 1 (RCW 9A.44.040)   |
|      | Rape of a Child 1 (RCW 9A.44.073)  |
|      | Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))                               |
| XI   | Rape 2 (RCW 9A.44.050)   |
|      | Rape of a Child 2 (RCW 9A.44.076)  |
|      | Manslaughter 1 (RCW 9A.32.060)   |
| X    | Kidnapping 1 (RCW 9A.40.020)   |
|      | Child Molestation 1 (RCW 9A.44.083)  |
|      | Malicious explosion 3 (RCW 70.74.280(3))   |
|      | Over 18 and deliver heroin or narcotic from Schedule I or II to someone under 18 (RCW 69.50.406) |
|      | Leading Organized Crime (RCW 9A.82.060(1)(a))  |
|      | Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))                              |
| IX   | Assault of a Child 2 (RCW 9A.36.130)   |
|      | Robbery 1 (RCW 9A.56.200)  |
|      | Explosive devices prohibited (RCW 70.74.180)   |

Malicious placement of an explosive 2 (RCW 70.74.270(2))

Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)

Controlled Substance Homicide (RCW 69.50.415)

Sexual Exploitation (RCW 9.68A.040)

Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))

Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)

Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (section 1 of this act)

VIII

Arson 1 (RCW 9A.48.020)

Promoting Prostitution 1 (RCW 9A.88.070)

Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)

Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))

Manufacture, deliver, or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))

Possession of ephedrine or pseudoephedrine with intent to manufacture methamphetamine (RCW 69.50.440)

Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)

Homicide by Watercraft, by the operation of any vessel in a reckless manner (section 1 of this act)

Manslaughter 2 (RCW 9A.32.070)

- VII      Burglary I (RCW 9A.52.020)  
           Vehicular Homicide, by disregard for the  
           safety of others (RCW 46.61.520)  
           Homicide by Watercraft, by disregard for the  
           safety of others (section 1 of this act)  
           Introducing Contraband I (RCW 9A.76.140)  
           Indecent Liberties (without forcible  
           compulsion) (RCW 9A.44.100(1) (b)  
           and (c))  
           Child Molestation 2 (RCW 9A.44.086)  
           Dealing in depictions of minor engaged in  
           sexually explicit conduct (RCW  
           9.68A.050)  
           Sending, bringing into state depictions of  
           minor engaged in sexually explicit  
           conduct (RCW 9.68A.060)  
           Involving a minor in drug dealing (RCW  
           69.50.401(f))  
           Drive-by Shooting (RCW 9A.36.045)  
           Unlawful Possession of a Firearm in the first  
           degree (RCW 9A.41.040(1)(a))  
           Malicious placement of an explosive 3 (RCW  
           70.74.270(3))
- VI        Bribery (RCW 9A.68.010)  
           Rape of a Child 3 (RCW 9A.44.079)  
           Intimidating a Juror/Witness (RCW  
           9A.72.110, 9A.72.130)  
           Malicious placement of an imitation device 2  
           (RCW 70.74.272(1)(b))  
           Incest 1 (RCW 9A.64.020(1))  
           Manufacture, deliver, or possess with intent  
           to deliver narcotics from Schedule I or  
           II (except heroin or cocaine) (RCW  
           69.50.401(a)(1)(i))  
           Intimidating a Judge (RCW 9A.72.160)  
           Bail Jumping with Murder 1 (RCW  
           9A.76.170(2)(a))  
           Theft of a Firearm (RCW 9A.56.300)
- V         Persistent prison misbehavior (RCW  
           9.94.070)  
           Criminal Mistreatment 1 (RCW 9A.42.020)  
           Abandonment of dependent person 1 (RCW  
           9A.42.060)

- Rape 3 (RCW 9A.44.060)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Child Molestation 3 (RCW 9A.44.089)
- Kidnapping 2 (RCW 9A.40.030)
- Extortion 1 (RCW 9A.56.120)
- Incest 2 (RCW 9A.64.020(2))
- Perjury 1 (RCW 9A.72.020)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
- Sexually Violating Human Remains (RCW 9A.44.105)
- Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
- Possession of a Stolen Firearm (RCW 9A.56.310)
- IV Residential Burglary (RCW 9A.52.025)
- Theft of Livestock 1 (RCW 9A.56.080)
- Robbery 2 (RCW 9A.56.210)
- Assault 2 (RCW 9A.36.021)
- Escape 1 (RCW 9A.76.110)
- Arson 2 (RCW 9A.48.030)
- Commercial Bribery (RCW 9A.68.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Malicious Harassment (RCW 9A.36.080)
- Threats to Bomb (RCW 9.61.160)
- Willful Failure to Return from Furlough (RCW 72.66.060)
- Hit and Run—Injury Accident (RCW 46.52.020(4))
- Hit and Run with Vessel—Injury Accident (RCW 88.12.155(3))
- Vehicular Assault (RCW 46.61.522)

Assault by Watercraft (section 2 of this act)  
 Manufacture, deliver, or possess with intent  
 to deliver narcotics from Schedule III,  
 IV, or V or nonnarcotics from Schedule  
 I-V (except marijuana or  
 methamphetamines) (RCW 69.50.401  
 (a)(1) (iii) through (v))  
 Influencing Outcome of Sporting Event  
 (RCW 9A.82.070)  
 Use of Proceeds of Criminal Profiteering  
 (RCW 9A.82.080 (1) and (2))  
 Knowingly Trafficking in Stolen Property  
 (RCW 9A.82.050(2))

III

Criminal Gang Intimidation (RCW  
 9A.46.120)  
 Criminal Mistreatment 2 (RCW 9A.42.030)  
 Abandonment of dependent person 2 (RCW  
 9A.42.070)  
 Extortion 2 (RCW 9A.56.130)  
 Unlawful Imprisonment (RCW 9A.40.040)  
 Assault 3 (RCW 9A.36.031)  
 Assault of a Child 3 (RCW 9A.36.140)  
 Custodial Assault (RCW 9A.36.100)  
 Unlawful possession of firearm in the second  
 degree (RCW 9.41.040(1)(b))  
 Harassment (RCW 9A.46.020)  
 Promoting Prostitution 2 (RCW 9A.88.080)  
 Willful Failure to Return from Work Release  
 (RCW 72.65.070)  
 Burglary 2 (RCW 9A.52.030)  
 Introducing Contraband 2 (RCW 9A.76.150)  
 Communication with a Minor for Immoral  
 Purposes (RCW 9.68A.090)  
 Patronizing a Juvenile Prostitute (RCW  
 9.68A.100)  
 Escape 2 (RCW 9A.76.120)  
 Perjury 2 (RCW 9A.72.030)  
 Bail Jumping with class B or C Felony (RCW  
 9A.76.170(2)(c))  
 Intimidating a Public Servant (RCW  
 9A.76.180)  
 Tampering with a Witness (RCW 9A.72.120)

- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(iii))
- Delivery of a material in lieu of a controlled substance (RCW 69.50.401(c))
- Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
- Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
- Theft of livestock 2 (RCW 9A.56.080)
- Securities Act violation (RCW 21.20.400)
- II Unlawful Practice of Law (RCW 2.48.180)
- Malicious Mischief 1 (RCW 9A.48.070)
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Class B Felony Theft of Rental, Leased, or Lease-purchased Property (RCW 9A.56.096(4))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- Health Care False Claims (RCW 48.80.030)
- Possession of controlled substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.401(d))
- Possession of phencyclidine (PCP) (RCW 69.50.401(d))
- Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
- Computer Trespass 1 (RCW 9A.52.110)
- Escape from Community Custody (RCW 72.09.310)
- I Theft 2 (RCW 9A.56.040)
- Class C Felony Theft of Rental, Leased, or Lease-purchased Property (RCW 9A.56.096(4))
- Possession of Stolen Property 2 (RCW 9A.56.160)

Forgery (RCW 9A.60.020)  
 Taking Motor Vehicle Without Permission  
 (RCW 9A.56.070)  
 Vehicle Prowl 1 (RCW 9A.52.095)  
 Attempting to Elude a Pursuing Police  
 Vehicle (RCW 46.61.024)  
 Malicious Mischief 2 (RCW 9A.48.080)  
 Reckless Burning 1 (RCW 9A.48.040)  
 Unlawful Issuance of Checks or Drafts (RCW  
 9A.56.060)  
 Unlawful Use of Food Stamps (RCW  
 9.91.140 (2) and (3))  
 False Verification for Welfare (RCW  
 74.08.055)  
 Forged Prescription (RCW 69.41.020)  
 Forged Prescription for a Controlled  
 Substance (RCW 69.50.403)  
 Possess Controlled Substance that is a  
 Narcotic from Schedule III, IV, or V or  
 Non-narcotic from Schedule I-V  
 (except phencyclidine) (RCW  
 69.50.401(d))

**Sec. 5.** RCW 88.12.010 and 1997 c 391 s 1 are each amended to read as follows:

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

(1) "Boat wastes" includes, but is not limited to, sewage, garbage, marine debris, plastics, contaminated bilge water, cleaning solvents, paint scrapings, or discarded petroleum products associated with the use of vessels.

(2) "Boater" means any person on a vessel on waters of the state of Washington.

(3) "Carrying passengers for hire" means carrying passengers in a vessel on waters of the state for valuable consideration, whether given directly or indirectly or received by the owner, agent, operator, or other person having an interest in the vessel. This shall not include trips where expenses for food, transportation, or incidentals are shared by participants on an even basis. Anyone receiving compensation for skills or money for amortization of equipment and carrying passengers shall be considered to be carrying passengers for hire on waters of the state.

(4) "Commission" means the state parks and recreation commission.

(5) "Darkness" means that period between sunset and sunrise.

(6) "Environmentally sensitive area" means a restricted body of water where discharge of untreated sewage from boats is especially detrimental because of limited flushing, shallow water, commercial or recreational shellfish, swimming

areas, diversity of species, the absence of other pollution sources, or other characteristics.

(7) "Guide" means any individual, including but not limited to subcontractors and independent contractors, engaged for compensation or other consideration by a whitewater river outfitter for the purpose of operating vessels. A person licensed under RCW 77.32.211 or 75.28.780 and acting as a fishing guide is not considered a guide for the purposes of this chapter.

(8) "Marina" means a facility providing boat moorage space, fuel, or commercial services. Commercial services include but are not limited to overnight or live-aboard boating accommodations.

(9) "Motor driven boats and vessels" means all boats and vessels which are self propelled.

(10) "Muffler" or "muffler system" means a sound suppression device or system, including an underwater exhaust system, designed and installed to abate the sound of exhaust gases emitted from an internal combustion engine and that prevents excessive or unusual noise.

(11) "Operate" means to steer, direct, or otherwise have physical control of a vessel that is underway.

(12) "Operator" means an individual who steers, directs, or otherwise has physical control of a vessel that is underway or exercises actual authority to control the person at the helm.

(13) "Observer" means the individual riding in a vessel who is responsible for observing a water skier at all times.

(14) "Owner" means a person who has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest.

(15) "Person" means any individual, sole proprietorship, partnership, corporation, nonprofit corporation or organization, limited liability company, firm, association, or other legal entity located within or outside this state.

(16) "Personal flotation device" means a buoyancy device, life preserver, buoyant vest, ring buoy, or buoy cushion that is designed to float a person in the water and that is approved by the commission.

(17) "Personal watercraft" means a vessel of less than sixteen feet that uses a motor powering a water jet pump, as its primary source of motive power and that is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

(18) "Polluted area" means a body of water used by boaters that is contaminated by boat wastes at unacceptable levels, based on applicable water quality and shellfish standards.

(19) "Public entities" means all elected or appointed bodies, including tribal governments, responsible for collecting and spending public funds.

(20) "Reckless" or "recklessly" means acting carelessly and heedlessly in a willful and wanton disregard of the rights, safety, or property of another.



(21) "Sewage pumpout or dump unit" means:

(a) A receiving chamber or tank designed to receive vessel sewage from a "porta-potty" or a portable container; and

(b) A stationary or portable mechanical device on land, a dock, pier, float, barge, vessel, or other location convenient to boaters, designed to remove sewage waste from holding tanks on vessels.

(22) "Underway" means that a vessel is not at anchor, or made fast to the shore, or aground.

(23) "Vessel" includes every description of watercraft on the water, other than a seaplane, used or capable of being used as a means of transportation on the water. However, it does not include inner tubes, air mattresses, sailboards, and small rafts or flotation devices or toys customarily used by swimmers.

(24) "Water skiing" means the physical act of being towed behind a vessel on, but not limited to, any skis, aquaplane, kneeboard, tube, or any other similar device.

(25) "Waters of the state" means any waters within the territorial limits of Washington state.

(26) "Whitewater river outfitter" means any person who is advertising to carry or carries passengers for hire on any whitewater river of the state, but does not include any person whose only service on a given trip is providing instruction in canoeing or kayaking skills.

(27) "Whitewater rivers of the state" means those rivers and streams, or parts thereof, within the boundaries of the state as listed in RCW 88.12.265 or as designated by the commission under RCW 88.12.279.

Passed the House March 9, 1998.

Passed the Senate February 27, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

## CHAPTER 220

[House Bill 1172]

### SEX OFFENDER REGISTRATION

AN ACT Relating to sex offender registration; amending RCW 9A.44.135, 9A.44.140, 43.43.540, and 4.24.130; and reenacting and amending RCW 9A.44.130 and 4.24.550.

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

**Sec. 1.** RCW 9A.44.130 and 1997 c 340 s 3 and 1997 c 113 s 3 are each reenacted and amended to read as follows:

(1) Any adult or juvenile residing, or who is a student, is employed, or carries on a vocation in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense or kidnapping offense, shall register with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the

county of the person's school, or place of employment or vocation. Where a person required to register under this section is in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility as a result of a sex offense or kidnapping offense, the person shall also register at the time of release from custody with an official designated by the agency that has jurisdiction over the person.

(2) The person shall provide (~~the county sheriff with~~) the following information when registering: (a) Name; (b) address; (c) date and place of birth; (d) place of employment; (e) crime for which convicted; (f) date and place of conviction; (g) aliases used; (~~and~~) (h) social security number; (i) photograph; and (j) fingerprints.

(3)(a) Offenders shall register within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses or kidnapping offenses:

(i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) kidnapping offenders who on or after July 27, 1997, are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county of the offender's anticipated residence. The offender must also register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register. Failure to register at the time of release and within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection (~~(7)~~) (8) of this section.

When the agency with jurisdiction intends to release an offender with a duty to register under this section, and the agency has knowledge that the offender is eligible for developmental disability services from the department of social and health services, the agency shall notify the division of developmental disabilities of the release. Notice shall occur not more than thirty days before the offender is to be released. The agency and the division shall assist the offender in meeting the initial registration requirement under this section. Failure to provide such assistance shall not constitute a defense for any violation of this section.

(ii) OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody but are

under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (3)(a)(ii) as of July 28, 1991, or a kidnapping offender required to register as of July 27, 1997, shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iii) OFFENDERS UNDER FEDERAL JURISDICTION. Sex offenders who, on or after July 23, 1995, and kidnapping offenders who, on or after July 27, 1997, as a result of that offense are in the custody of the United States bureau of prisons or other federal or military correctional agency for sex offenses committed before, on, or after February 28, 1990, or kidnapping offenses committed on, before, or after July 27, 1997, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. Sex offenders who, on July 23, 1995, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (3)(a)(iii) as of July 23, 1995, or a kidnapping offender required to register as of July 27, 1997 shall not relieve the offender of the duty to register or to reregister following a change in residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iv) OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED. Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, and kidnapping offenders who are convicted on or after July 27, 1997, for a kidnapping offense that was committed on or after July 27, 1997, but who are not sentenced to serve

a term of confinement immediately upon sentencing, shall report to the county sheriff to register immediately upon completion of being sentenced.

(v) **OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS.** Sex offenders and kidnapping offenders who move to Washington state from another state or a foreign country that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within thirty days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after February 28, 1990, and to kidnapping offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after July 27, 1997. Sex offenders and kidnapping offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) **OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY.** Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of (A) committing a sex offense on, before, or after February 28, 1990, and who, on or after July 23, 1995, is in custody, as a result of that finding, of the state department of social and health services, or (B) committing a kidnapping offense on, before, or after July 27, 1997, and who on or after July 27, 1997, is in custody, as a result of that finding, of the state department of social and health services, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before July 27, 1997, shall be required to register within twenty-four hours of receiving notice of this registration requirement. The state department of social and health services shall make reasonable attempts within available resources to notify sex offenders who were released before July 23, 1995, and kidnapping offenders who were released before July 27, 1997. Failure to register within twenty-four hours of release, or of receiving notice, constitutes a violation of this section and is punishable as provided in subsection ~~((7))~~ (8) of this section.

(b) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection ((7)) (8) of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (3)(c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(4)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff ((at least fourteen days before)) within seventy-two hours of moving. If any person required to register pursuant to this section moves to a new county, the person must send written notice of the change of address at least fourteen days before moving to the county sheriff in the new county of residence and must register with that county sheriff within twenty-four hours of moving. The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered. The county sheriff with whom the person last registered shall promptly forward the information concerning the change of address to the county sheriff for the county of the person's new residence. If any person required to register pursuant to this section moves out of Washington state, the person must also send written notice within ten days of moving to the new state or a foreign country to the county sheriff with whom the person last registered in Washington state. Upon receipt of notice of change of address to a new state, the county sheriff shall promptly forward the information regarding the change of address to the agency designated by the new state as the state's offender registration agency.

(b) It is an affirmative defense to a charge that the person failed to send a notice at least fourteen days in advance of moving as required under (a) of this subsection that the person did not know the location of his or her new residence at least fourteen days before moving. The defendant must establish the defense by a preponderance of the evidence and, to prevail on the defense, must also prove by a preponderance that the defendant sent the required notice within twenty-four hours of determining the new address.

(5) A sex offender subject to registration requirements under this section who applies to change his or her name under RCW 4.24.130 or any other law shall submit a copy of the application to the county sheriff of the county of the person's residence and to the state patrol not fewer than five days before the entry of an order granting the name change. No sex offender under the requirement to register under this section at the time of application shall be granted an order changing his or her name if the court finds that doing so will interfere with legitimate law enforcement interests, except that no order shall be denied when the name change is requested for religious or legitimate cultural reasons or in recognition of marriage or dissolution of marriage. A sex offender under the requirement to register under this section who receives an order changing his or her name shall submit a copy of the order to the county sheriff of the county of the person's residence and to the state patrol within five days of the entry of the order.

(6) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

~~((6))~~ (7) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330:

(a) "Sex offense" means any offense defined as a sex offense by RCW 9.94A.030 and any violation of RCW 9.68A.040 (sexual exploitation of a minor), 9.68A.050 (dealing in depictions of minor engaged in sexually explicit conduct), 9.68A.060 (sending, bringing into state depictions of minor engaged in sexually explicit conduct), 9.68A.090 (communication with minor for immoral purposes), 9.68A.100 (patronizing juvenile prostitute), or 9A.44.096 (sexual misconduct with a minor in the second degree), as well as any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030.

(b) "Kidnapping offense" means the crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent.

~~((7))~~ (c) "Employed" or "carries on a vocation" means employment that is full-time or part-time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit.

(d) "Student" means a person who is enrolled, on a full-time or part-time basis, in any public or private educational institution. An educational institution includes any secondary school, trade or professional institution, or institution of higher education.

(8) A person who knowingly fails to register or who moves without notifying the county sheriff, or who changes his or her name without notifying the county

sheriff and the state patrol, as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony. If the crime was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony, violation of this section is a gross misdemeanor.

**Sec. 2.** RCW 9A.44.135 and 1995 c 248 s 3 are each amended to read as follows:

(1) When ~~((a-sex))~~ an offender registers with the county sheriff pursuant to RCW 9A.44.130, the county sheriff shall make reasonable attempts to verify that the ~~((sex))~~ offender is residing at the registered address. Reasonable attempts at verifying an address shall include at a minimum ~~((sending certified mail, with return receipt requested, to the sex offender at the registered address, and if the return receipt is not signed by the sex offender, talking in person with the residents living at the address))~~;

(a) Each year the county sheriff shall send by certified mail, with return receipt requested, a nonforwardable verification form to the offender at the offender's last registered address.

(b) The offender must sign the verification form, state on the form whether he or she still resides at the last registered address, and return the form to the county sheriff within ten days after receipt of the form.

(2) The sheriff shall make reasonable attempts to locate any sex offender who fails to return the verification form or who cannot be located at the registered address. If the offender fails to return the verification form or the offender is not at the last registered address, the county sheriff shall promptly forward this information to the Washington state patrol for inclusion in the central registry of sex offenders.

**Sec. 3.** RCW 9A.44.140 and 1997 c 113 s 4 are each amended to read as follows:

(1) The duty to register under RCW 9A.44.130 shall end:

(a) For a person convicted of a class A felony, or a person convicted of any sex offense or kidnapping offense who has one or more prior conviction for a sex offense or kidnapping offense: Such person may only be relieved of the duty to register under subsection (3) or (4) of this section.

(b) For a person convicted of a class B felony, and the person does not have one or more prior conviction for a sex offense or kidnapping offense: Fifteen years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent fifteen consecutive years in the community without being convicted of any new offenses.

(c) For a person convicted of a class C felony, a violation of RCW 9.68A.090 or 9A.44.096, or an attempt, solicitation, or conspiracy to commit a class C felony, and the person does not have one or more prior conviction for a sex

offense or kidnapping offense: Ten years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent ten consecutive years in the community without being convicted of any new offenses.

(2) The provisions of subsection (1) of this section shall apply equally to a person who has been found not guilty by reason of insanity under chapter 10.77 RCW of a sex offense or kidnapping offense.

(3) Any person having a duty to register under RCW 9A.44.130 may petition the superior court to be relieved of that duty, if the person has spent ten consecutive years in the community without being convicted of any new offenses. The petition shall be made to the court in which the petitioner was convicted of the offense that subjects him or her to the duty to register, or, in the case of convictions in other states, a foreign country, or a federal or military court, to the court in Thurston county. The prosecuting attorney of the county shall be named and served as the respondent in any such petition. The court shall consider the nature of the registrable offense committed, and the criminal and relevant noncriminal behavior of the petitioner both before and after conviction, and may consider other factors. Except as provided in subsection (4) of this section, the court may relieve the petitioner of the duty to register only if the petitioner shows, with clear and convincing evidence, that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

(4) An offender having a duty to register under RCW 9A.44.130 for a sex offense or kidnapping offense committed when the offender was a juvenile may petition the superior court to be relieved of that duty. The court shall consider the nature of the registrable offense committed, and the criminal and relevant noncriminal behavior of the petitioner both before and after adjudication, and may consider other factors. The court may relieve the petitioner of the duty to register for a sex offense or kidnapping offense that was committed while the petitioner was fifteen years of age or older only if the petitioner shows, with clear and convincing evidence, that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330. The court may relieve the petitioner of the duty to register for a sex offense or kidnapping offense that was committed while the petitioner was under the age of fifteen if the petitioner (a) has not been adjudicated of any additional sex offenses or kidnapping offenses during the twenty-four months following the adjudication for the offense giving rise to the duty to register, and (b) the petitioner proves by a preponderance of the evidence that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

This subsection shall not apply to juveniles prosecuted as adults.

(5) Unless relieved of the duty to register pursuant to this section, a violation of RCW 9A.44.130 is an ongoing offense for purposes of the statute of limitations under RCW 9A.04.080.



(6) Nothing in RCW 9.94A.220 relating to discharge of an offender shall be construed as operating to relieve the offender of his or her duty to register pursuant to RCW 9A.44.130.

**Sec. 4.** RCW 43.43.540 and 1997 c 113 s 6 are each amended to read as follows:

The county sheriff shall forward the information, photographs, and fingerprints obtained pursuant to RCW 9A.44.130, including any notice of change of address, to the Washington state patrol within five working days. The state patrol shall maintain a central registry of sex offenders and kidnapping offenders required to register under RCW 9A.44.130 and shall adopt rules consistent with chapters 10.97, 10.98, and 43.43 RCW as are necessary to carry out the purposes of RCW 9A.44.130, 9A.44.140, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330. The Washington state patrol shall reimburse the counties for the costs of processing the offender registration, including taking the fingerprints and the photographs.

**Sec. 5.** RCW 4.24.130 and 1995 1st sp.s. c 19 s 14 are each amended to read as follows:

(1) Any person desiring a change of his or her name or that of his or her child or ward, may apply therefor to the district court of the judicial district in which he or she resides, by petition setting forth the reasons for such change; thereupon such court in its discretion may order a change of the name and thenceforth the new name shall be in place of the former.

(2) An offender under the jurisdiction of the department of corrections who applies to change his or her name under subsection (1) of this section shall submit a copy of the application to the department of corrections not fewer than five days before the entry of an order granting the name change. No offender under the jurisdiction of the department of corrections at the time of application shall be granted an order changing his or her name if the court finds that doing so will interfere with legitimate penological interests, except that no order shall be denied when the name change is requested for religious or legitimate cultural reasons or in recognition of marriage or dissolution of marriage. An offender under the jurisdiction of the department of corrections who receives an order changing his or her name shall submit a copy of the order to the department of corrections within five days of the entry of the order. Violation of this subsection is a misdemeanor.

(3) A sex offender subject to registration under RCW 9A.44.130 who applies to change his or her name under subsection (1) of this section shall follow the procedures set forth in RCW 9A.44.130(5).

(4) The district court shall collect the fees authorized by RCW 36.18.010 for filing and recording a name change order, and transmit the fee and the order to the county auditor. The court may collect a reasonable fee to cover the cost of transmitting the order to the county auditor.

~~((4))~~ (5) Name change petitions may be filed and shall be heard in superior court when the person desiring a change of his or her name or that of his or her child or ward is a victim of domestic violence as defined in RCW 26.50.010(1) and the person seeks to have the name change file sealed due to reasonable fear for his or her safety or that of his or her child or ward. Upon granting the name change, the superior court shall seal the file if the court finds that the safety of the person seeking the name change or his or her child or ward warrants sealing the file. In all cases filed under this subsection, whether or not the name change petition is granted, there shall be no public access to any court record of the name change filing, proceeding, or order, unless the name change is granted but the file is not sealed.

Sec. 6. RCW 4.24.550 and 1997 c 364 s 1 and 1997 c 113 s 2 are each reenacted and amended to read as follows:

(1) Public agencies are authorized to release information to the public regarding sex offenders and kidnapping offenders when the agency determines that disclosure of the information is relevant and necessary to protect the public and counteract the danger created by the particular offender. This authorization applies to information regarding: (a) Any person adjudicated or convicted of a sex offense as defined in RCW (~~(9-94A-030)~~) 9A.44.130 or a kidnapping offense as defined by RCW 9A.44.130; (h) any person under the jurisdiction of the indeterminate sentence review board as the result of a sex offense or kidnapping offense; (c) any person committed as a sexually violent predator under chapter 71.09 RCW or as a sexual psychopath under chapter 71.06 RCW; (d) any person found not guilty of a sex offense or kidnapping offense by reason of insanity under chapter 10.77 RCW; and (e) any person found incompetent to stand trial for a sex offense or kidnapping offense and subsequently committed under chapter 71.05 or 71.34 RCW.

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

(3) Local law enforcement agencies shall consider the following guidelines in determining the extent of a public disclosure made under this section: (a) For offenders classified as risk level I, the agency shall share information with other appropriate law enforcement agencies and may disclose, upon request, relevant, necessary, and accurate information to any victim or witness to the offense and to any individual community member who lives near the residence where the offender resides, expects to reside, or is regularly found; (b) for offenders classified as risk level II, the agency may also disclose relevant, necessary, and accurate information to public and private schools, child day care centers, family day care providers, businesses and organizations that serve primarily children, women, or vulnerable adults, and neighbors and community groups near the residence where the offender resides, expects to reside, or is regularly found; and

(c) for offenders classified as risk level III, the agency may also disclose relevant, necessary, and accurate information to the public at large.

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

(5) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470 is immune from civil liability for damages for any discretionary risk level classification decisions or release of relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity in this section applies to risk level classification decisions and the release of relevant and necessary information regarding any individual for whom disclosure is authorized. The decision of a local law enforcement agency or official to classify ~~((a-sex))~~ an offender to a risk level other than the one assigned by the department of corrections, the department of social and health services, or the indeterminate sentence review board, or the release of any relevant and necessary information based on that different classification shall not, by itself, be considered gross negligence or bad faith. The immunity provided under this section applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the general public.

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

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

(8) When a local law enforcement agency or official classifies ~~((a-sex))~~ an offender differently than the offender is classified by the department of corrections, the department of social and health services, or the indeterminate sentence review board, the law enforcement agency or official shall notify the appropriate department or the board and submit its reasons supporting the change in classification.

**NEW SECTION. Sec. 7.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House March 7, 1998.  
Passed the Senate March 4, 1998.  
Approved by the Governor March 30, 1998.  
Filed in Office of Secretary of State March 30, 1998.

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**CHAPTER 221**

[Substitute House Bill 1441]

**VOYEURISM**

AN ACT Relating to the crime of voyeurism; reenacting and amending RCW 9A.04.080; adding a new section to chapter 9A.44 RCW; and prescribing penalties.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 9A.44 RCW to read as follows:

(1) As used in this section:

(a) "Photographs" or "films" means the making of a photograph, motion picture film, videotape, or any other recording or transmission of the image of a person;

(b) "Place where he or she would have a reasonable expectation of privacy" means:

(i) A place where a reasonable person would believe that he or she could disrobe in privacy, without being concerned that his or her undressing was being photographed or filmed by another; or

(ii) A place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance;

(c) "Surveillance" means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person;

(d) "Views" means the intentional looking upon of another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or with a device designed or intended to improve visual acuity.

(2) A person commits the crime of voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, or films another person, without that person's knowledge and consent, while the person being viewed, photographed, or filmed is in a place where he or she would have a reasonable expectation of privacy.

(3) Voyeurism is a class C felony.

(4) This section does not apply to viewing, photographing, or filming by personnel of the department of corrections or of a local jail or correctional facility for security purposes or during investigation of alleged misconduct by a person in the custody of the department of corrections or the local jail or correctional facility.

Sec. 2. RCW 9A.04.080 and 1997 c 174 s 1 and 1997 c 97 s 1 are each reenacted and amended to read as follows:

(1) Prosecutions for criminal offenses shall not be commenced after the periods prescribed in this section.

(a) The following offenses may be prosecuted at any time after their commission:

- (i) Murder;
- (ii) Homicide by abuse;
- (iii) Arson if a death results;
- (iv) Vehicular homicide;
- (v) Vehicular assault if a death results;
- (vi) Hit-and-run injury-accident if a death results (RCW 46.52.020(4)).

(b) The following offenses shall not be prosecuted more than ten years after their commission:

(i) Any felony committed by a public officer if the commission is in connection with the duties of his or her office or constitutes a breach of his or her public duty or a violation of the oath of office;

(ii) Arson if no death results; or

(iii) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is reported to a law enforcement agency within one year of its commission; except that if the victim is under fourteen years of age when the rape is committed and the rape is reported to a law enforcement agency within one year of its commission, the violation may be prosecuted up to three years after the victim's eighteenth birthday or up to ten years after the rape's commission, whichever is later. If a violation of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape may not be prosecuted: (A) More than three years after its commission if the violation was committed against a victim fourteen years of age or older; or (B) more than three years after the victim's eighteenth birthday or more than seven years after the rape's commission, whichever is later, if the violation was committed against a victim under fourteen years of age.

(c) Violations of the following statutes shall not be prosecuted more than three years after the victim's eighteenth birthday or more than seven years after their commission, whichever is later: RCW 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, 9A.44.070, 9A.44.080, 9A.44.100(1)(b), or 9A.64.020.

(d) The following offenses shall not be prosecuted more than six years after their commission: Violations of RCW 9A.82.060 or 9A.82.080.

(e) The following offenses shall not be prosecuted more than five years after their commission: Any class C felony under chapter 74.09, 82.36, or 82.38 RCW.

(f) Bigamy shall not be prosecuted more than three years after the time specified in RCW 9A.64.010.

(g) A violation of RCW 9A.56.030 must not be prosecuted more than three years after the discovery of the offense when the victim is a tax exempt corporation under 26 U.S.C. Sec. 501(c)(3).

(h) No other felony may be prosecuted more than three years after its commission; except that in a prosecution under section 1 of this act, if the person who was viewed, photographed, or filmed did not realize at the time that he or she

was being viewed, photographed, or filmed, the prosecution must be commenced within two years of the time the person who was viewed or in the photograph or film first learns that he or she was viewed, photographed, or filmed.

(i) No gross misdemeanor may be prosecuted more than two years after its commission.

(j) No misdemeanor may be prosecuted more than one year after its commission.

(2) The periods of limitation prescribed in subsection (1) of this section do not run during any time when the person charged is not usually and publicly resident within this state.

(3) If, before the end of a period of limitation prescribed in subsection (1) of this section, an indictment has been found or a complaint or an information has been filed, and the indictment, complaint, or information is set aside, then the period of limitation is extended by a period equal to the length of time from the finding or filing to the setting aside.

Passed the House March 11, 1998.

Passed the Senate March 10, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

## CHAPTER 222

[Engrossed Substitute House Bill 1769]

### ELECTRONIC COMMUNICATION OF PRESCRIPTION INFORMATION

AN ACT Relating to electronic transfer of prescription information; amending RCW 69.41.010 and 69.50.101; adding a new section to chapter 69.41 RCW; and adding a new section to chapter 69.50 RCW.

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

**Sec. 1.** RCW 69.41.010 and 1996 c 178 s 16 are each amended to read as follows:

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

(1) "Administer" means the direct application of a legend drug whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner; or

(b) The patient or research subject at the direction of the practitioner.

(2) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a legend drug, whether or not there is an agency relationship.

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

(4) "Dispense" means the interpretation of a prescription or order for a legend drug and, pursuant to that prescription or order, the proper selection, measuring,

compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(5) "Dispenser" means a practitioner who dispenses.

(6) "Distribute" means to deliver other than by administering or dispensing a legend drug.

(7) "Distributor" means a person who distributes.

(8) "Drug" means:

(a) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) Substances (other than food, minerals or vitamins) intended to affect the structure or any function of the body of man or animals; and

(d) Substances intended for use as a component of any article specified in clause (a), (b), or (c) of this subsection. It does not include devices or their components, parts, or accessories.

(9) "Electronic communication of prescription information" means the communication of prescription information by computer, or the transmission of an exact visual image of a prescription by facsimile, or other electronic means for original prescription information or prescription refill information for a legend drug between an authorized practitioner and a pharmacy or the transfer of prescription information for a legend drug from one pharmacy to another pharmacy.

(10) "Legend drugs" means any drugs which are required by state law or regulation of the state board of pharmacy to be dispensed on prescription only or are restricted to use by practitioners only.

~~((+0))~~ (11) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

~~((+1))~~ (12) "Practitioner" means:

(a) A physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW, an optometrist under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, an osteopathic physician assistant under chapter 18.57A RCW, a physician assistant under chapter 18.71A RCW, a naturopath licensed under chapter 18.36A RCW, or a pharmacist under chapter 18.64 RCW;

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a legend drug in the course of professional practice or research in this state; and

(c) A physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery in any state, or province of Canada, which shares a common border with the state of Washington.

~~((+2))~~ (13) "Secretary" means the secretary of health or the secretary's designee.

NEW SECTION. Sec. 2. A new section is added to chapter 69.41 RCW to read as follows:

(1) Information concerning an original prescription or information concerning a prescription refill for a legend drug may be electronically communicated between an authorized practitioner and a pharmacy of the patient's choice with no intervening person having access to the prescription drug order pursuant to the provisions of this chapter if the electronically communicated prescription information complies with the following:

(a) Electronically communicated prescription information must comply with all applicable statutes and rules regarding the form, content, recordkeeping, and processing of a prescription for a legend drug;

(b) The system used for transmitting electronically communicated prescription information and the system used for receiving electronically communicated prescription information must be approved by the board. This subsection does not apply to currently used facsimile equipment transmitting an exact visual image of the prescription. The board shall maintain and provide, upon request, a list of systems used for electronically communicating prescription information currently approved by the board;

(c) An explicit opportunity for practitioners must be made to indicate their preference, on whether a therapeutically equivalent generic drug may be substituted;

(d) Prescription drug orders are confidential health information, and may be released only to the patient or the patient's authorized representative, the prescriber or other authorized practitioner then caring for the patient, or other persons specifically authorized by law to receive such information;

(e) To maintain confidentiality of prescription records, the electronic system shall have adequate security and systems safeguards designed to prevent and detect unauthorized access, modification, or manipulation of these records. The pharmacist in charge shall establish or verify the existence of policies and procedures which ensure the integrity and confidentiality of prescription information transmitted to the pharmacy by electronic means. All managers, employees, and agents of the pharmacy are required to read, sign, and comply with the established policies and procedures; and

(f) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the prescription drug order received by way of electronic transmission, consistent with federal and state laws and rules and guidelines of the board.

(2) The board may adopt rules implementing this section.



**Sec. 3.** RCW 69.50.101 and 1996 c 178 s 18 are each amended to read as follows:

Unless the context clearly requires otherwise, definitions of terms shall be as indicated where used in this chapter:

(a) "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

(1) a practitioner authorized to prescribe (or, by the practitioner's authorized agent); or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseperson, or employee of the carrier or warehouseperson.

(c) "Board" means the state board of pharmacy.

(d) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or board rules.

(e)(1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

(i) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or

(ii) with respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.

(2) The term does not include:

(i) a controlled substance;

(ii) a substance for which there is an approved new drug application;

(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 355, to the extent conduct with respect to the substance is pursuant to the exemption; or

(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(f) "Deliver" or "delivery," means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

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

(h) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(i) "Dispenser" means a practitioner who dispenses.

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories.

(m) "Drug enforcement administration" means the drug enforcement administration in the United States Department of Justice, or its successor agency.

(n) "Immediate precursor" means a substance:

(1) that the state board of pharmacy has found to be and by rule designates as being the principal compound commonly used, or produced primarily for use, in the manufacture of a controlled substance;

(2) that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(3) the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(o) "Isomer" means an optical isomer, but in RCW 69.50.101(r)(5), 69.50.204(a) (12) and (34), and 69.50.206(a)(4), the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c) the term includes any positional isomer; and in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208(a) the term includes any positional or geometric isomer.

(p) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance:

(1) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(q) "Marijuana" or "marihuana" means all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(r) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, opium derivative, and any derivative of opium or opium derivative, including their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(2) Synthetic opiate and any derivative of synthetic opiate, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(3) Poppy straw and concentrate of poppy straw.

(4) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives or ecgonine or their salts have been removed.

(5) Cocaine, or any salt, isomer, or salt of isomer thereof.

(6) Cocaine base.

(7) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof.

(8) Any compound, mixture, or preparation containing any quantity of any substance referred to in subparagraphs (1) through (7).

(s) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, substances derived from opium (opium derivatives), and synthetic opiates. The term does not include, unless specifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes the racemic and levorotatory forms of dextromethorphan.

(t) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(u) "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(v) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(w) "Practitioner" means:

(1) A physician under chapter 18.71 RCW, a physician assistant under chapter 18.71A RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW, a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

(x) "Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.

(y) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

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

(aa) "State," unless the context otherwise requires, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(bb) "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

(cc) "Electronic communication of prescription information" means the communication of prescription information by computer, or the transmission of an exact visual image of a prescription by facsimile, or other electronic means for original prescription information or prescription refill information for a Schedule III-V controlled substance between an authorized practitioner and a pharmacy or

the transfer of prescription information for a controlled substance from one pharmacy to another pharmacy.

**NEW SECTION. Sec. 4.** A new section is added to chapter 69.50 RCW to read as follows:

(1) Information concerning an original prescription or information concerning a prescription refill for a controlled substance may be electronically communicated to a pharmacy of the patient's choice pursuant to the provisions of this chapter if the electronically communicated prescription information complies with the following:

(a) Electronically communicated prescription information must comply with all applicable statutes and rules regarding the form, content, recordkeeping, and processing of a prescription for a legend drug;

(b) The system used for transmitting electronically communicated prescription information and the system used for receiving electronically communicated prescription information must be approved by the board. This subsection does not apply to currently used facsimile equipment transmitting an exact visual image of the prescription. The board shall maintain and provide, upon request, a list of systems used for electronically communicating prescription information currently approved by the board;

(c) An explicit opportunity for practitioners must be made to indicate their preference on whether a therapeutically equivalent generic drug may be substituted;

(d) Prescription drug orders are confidential health information, and may be released only to the patient or the patient's authorized representative, the prescriber or other authorized practitioner then caring for the patient, or other persons specifically authorized by law to receive such information;

(e) To maintain confidentiality of prescription records, the electronic system shall have adequate security and systems safeguards designed to prevent and detect unauthorized access, modification, or manipulation of these records. The pharmacist in charge shall establish or verify the existence of policies and procedures which ensure the integrity and confidentiality of prescription information transmitted to the pharmacy by electronic means. All managers, employees, and agents of the pharmacy are required to read, sign, and comply with the established policies and procedures; and

(f) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the prescription drug order received by way of electronic transmission, consistent with federal and state laws and rules and guidelines of the board.

(2) The board may adopt rules implementing this section.

Passed the House March 9, 1998.

Passed the Senate March 2, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

**CHAPTER 223**

[Substitute House Bill 1781]

**MONITORING OF SUPERVISED OFFENDERS**

AN ACT Relating to the monitoring of supervised offenders under the jurisdiction of the state department of corrections; adding a new section to chapter 43.10 RCW; and creating new sections.

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

**NEW SECTION. Sec. 1.** The legislature finds that increased communications between local law enforcement officers and the state department of corrections' community corrections officers improves public safety through shared monitoring and supervision of offenders living in the community under the jurisdiction of the department of corrections.

Participating local law enforcement agencies and the local offices of the department of corrections have implemented the supervision management and recidivist tracking program, whereby each entity provides mutual assistance in supervising offenders living within the boundaries of local law enforcement agencies. The supervision management and recidivist tracking program has helped local law enforcement solve crimes faster or prevented future criminal activity by reporting offender's sentence violations in a more timely manner to community corrections officers by rapid and comprehensive electronic sharing of information regarding supervised offenders. The expansion of the supervision management and recidivist tracking program will improve public safety throughout the state.

**NEW SECTION. Sec. 2.** A new section is added to chapter 43.10 RCW to read as follows:

(1) There is created, as a component of the homicide investigative tracking system, a supervision management and recidivist tracking system called the SMART system. The office of the attorney general may contract with any state, local, or private agency necessary for implementation of and training for supervision management and recidivist tracking program partnerships for development and operation of a state-wide computer linkage between the attorney general's homicide investigative tracking system, local police departments, and the state department of corrections. Dormant information in the supervision management and recidivist tracking system shall be automatically archived after seven years. The department of corrections shall notify the attorney general when each person is no longer under its supervision.

(2) As used in this section, unless the context requires otherwise:

(a) "Dormant" means there have been no inquiries by the department of corrections or law enforcement with regard to an active supervision case or an active criminal investigation in the past seven years.

(b) "Archived" means information which is not in the active data base and can only be retrieved for use in an active criminal investigation.

**NEW SECTION. Sec. 3.** The homicide investigative tracking system and the supervision management and recidivist tracking system are tools for the administration of criminal justice and these systems may not be used for any other purpose.

Passed the House March 9, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

## CHAPTER 224

[Substitute House Bill 1992]

### WORKPLACE SAFETY RULES—MEETING OF IMPACTED PERSONS

AN ACT Relating to workplace safety rule implementation; and amending RCW 49.17.050.

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

**Sec. 1.** RCW 49.17.050 and 1973 c 80 s 5 are each amended to read as follows:

In the adoption of rules and regulations under the authority of this chapter, the director shall:

(1) Provide for the preparation, adoption, amendment, or repeal of rules and regulations of safety and health standards governing the conditions of employment of general and special application in all work places;

(2) Provide for the adoption of occupational health and safety standards which are at least as effective as those adopted or recognized by the United States secretary of labor under the authority of the Occupational Safety and Health Act of 1970 (Public Law 91-596; 84 Stat. 1590);

(3) Provide a method of encouraging employers and employees in their efforts to reduce the number of safety and health hazards at their work places and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(4) Provide for the promulgation of health and safety standards and the control of conditions in all work places concerning gases, vapors, dust, or other airborne particles, toxic materials, or harmful physical agents which shall set a standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life; any such standards shall require where appropriate the use of protective devices or equipment and for monitoring or measuring any such gases, vapors, dust, or other airborne particles, toxic materials, or harmful physical agents;

(5) Provide for appropriate reporting procedures by employers with respect to such information relating to conditions of employment which will assist in achieving the objectives of this chapter;

(6) Provide for the frequency, method, and manner of the making of inspections of work places without advance notice; and,

(7) Provide for the publication and dissemination to employers, employees, and labor organizations and the posting where appropriate by employers of informational, education, or training materials calculated to aid and assist in achieving the objectives of this chapter;

(8) Provide for the establishment of new and the perfection and expansion of existing programs for occupational safety and health education for employers and employees, and, in addition institute methods and procedures for the establishment of a program for voluntary compliance solely through the use of advice and consultation with employers and employees with recommendations including recommendations of methods to abate violations relating to the requirements of this chapter and all applicable safety and health standards and rules and regulations promulgated pursuant to the authority of this chapter;

(9) Provide for the adoption of safety and health standards requiring the use of safeguards in trenches and excavations and around openings of hoistways, hatchways, elevators, stairways, and similar openings;

(10) Provide for the promulgation of health and safety standards requiring the use of safeguards for all vats, pans, trimmers, cut off, gang edger, and other saws, planers, presses, formers, cogs, gearing, belting, shafting, coupling, set screws, live rollers, conveyors, mangles in laundries, and machinery of similar description, which can be effectively guarded with due regard to the ordinary use of such machinery and appliances and the danger to employees therefrom, and with which the employees of any such work place may come in contact while in the performance of their duties and prescribe methods, practices, or processes to be followed by employers which will enhance the health and safety of employees in the performance of their duties when in proximity to machinery or appliances mentioned in this subsection;

(11) Certify that no later than twenty business days prior to the effective date of any significant legislative rule, as defined by RCW 34.05.328, a meeting of impacted parties is convened to: (a) Identify ambiguities and problem areas in the rule; (b) coordinate education and public relations efforts by all parties; (c) provide comments regarding internal department training and enforcement plans; and (d) provide comments regarding appropriate evaluation mechanisms to determine the effectiveness of the new rule. The meeting shall include a balanced representation of both business and labor from impacted industries, department personnel responsible for the above subject areas, and other agencies or key stakeholder groups as determined by the department. An existing advisory committee may be utilized if appropriate.

Passed the House February 11, 1998.

Passed the Senate March 6, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.



**CHAPTER 225**

[Engrossed Substitute House Bill 2300]  
EDUCATIONAL PATHWAYS—REVISIONS

AN ACT Relating to educational pathways; amending RCW 28A.630.885; adding a new section to chapter 28A.600 RCW; and providing an expiration date.

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

**Sec. 1.** RCW 28A.630.885 and 1997 c 268 s 1 are each amended to read as follows:

(1) The Washington commission on student learning is hereby established. The primary purposes of the commission are to identify the knowledge and skills all public school students need to know and be able to do based on the student learning goals in RCW 28A.150.210, to develop student assessment and school accountability systems, to review current school district data reporting requirements and make recommendations on what data is necessary for the purposes of accountability and meeting state information needs, and to take other steps necessary to develop a performance-based education system. The commission shall include three members of the state board of education, three members appointed by the governor before July 1, 1992, and five members appointed no later than June 1, 1993, by the governor elected in the November 1992 election. The governor shall appoint a chair from the commission members, and fill any vacancies in gubernatorial appointments that may occur. The state board of education shall fill any vacancies of state board of education appointments that may occur. In making the appointments, educators, business leaders, and parents shall be represented, and nominations from state-wide education, business, and parent organizations shall be requested. Efforts shall be made to ensure that the commission reflects the racial and ethnic diversity of the state's K-12 student population and that the major geographic regions in the state are represented. Appointees shall be qualified individuals who are supportive of educational restructuring, who have a positive record of service, and who will devote sufficient time to the responsibilities of the commission to ensure that the objectives of the commission are achieved.

(2) The commission shall establish advisory committees. Membership of the advisory committees shall include, but not necessarily be limited to, professionals from the office of the superintendent of public instruction and the state board of education, and other state and local educational practitioners and student assessment specialists.

(3) The commission, with the assistance of the advisory committees, shall:

(a) Develop essential academic learning requirements based on the student learning goals in RCW 28A.150.210. Essential academic learning requirements shall be developed, to the extent possible, for each of the student learning goals in RCW 28A.150.210. Goals one and two shall be considered primary. Essential academic learning requirements for RCW 28A.150.210(1), goal one, and the mathematics component of RCW 28A.150.210(2), goal two, shall be completed

no later than March 1, 1995. Essential academic learning requirements that incorporate the remainder of RCW 28A.150.210 (2), (3), and (4), goals two, three, and four, shall be completed no later than March 1, 1996. To the maximum extent possible, the commission shall integrate goal four and the knowledge and skill areas in the other goals in the development of the essential academic learning requirements;

(b)(i) The commission shall present to the state board of education and superintendent of public instruction a state-wide academic assessment system for use in the elementary, middle, and high school years designed to determine if each student has mastered the essential academic learning requirements identified in (a) of this subsection. The academic assessment system shall include a variety of assessment methods, including criterion-referenced and performance-based measures. Performance standards for determining if a student has successfully completed an assessment shall be initially determined by the commission in consultation with the advisory committees required in subsection (2) of this section.

(ii) The assessment system shall be designed so that the results under the assessment system are used by educators as tools to evaluate instructional practices, and to initiate appropriate educational support for students who have not mastered the essential academic learning requirements at the appropriate periods in the student's educational development.

(iii) Assessments measuring the essential academic learning requirements developed for RCW 28A.150.210(1) and the mathematics component of RCW 28A.150.210(2) referred to in this section as reading, writing, communications, and mathematics shall be developed and initially implemented by the commission before transferring the assessment system to the superintendent of public instruction on June 30, 1999. The elementary assessments for reading, writing, communications, and mathematics shall be available for use by school districts no later than the 1996-97 school year, the middle school assessment no later than the 1997-98 school year, and the high school assessment no later than the 1998-99 school year, unless the legislature takes action to delay or prevent implementation of the assessment system and essential academic learning requirements. Assessments measuring the essential academic learning requirements developed for the science component of RCW 28A.150.210(2) at the middle school and high school levels shall be available for use by districts no later than the 1998-99 school year unless the legislature takes action to delay or prevent implementation of the assessment system and essential academic learning requirements.

The completed assessments and assessments still in development shall be transferred to the superintendent of public instruction by June 30, 1999, unless the legislature takes action to delay implementation of the assessment system and essential academic learning requirements. The superintendent shall continue the development of assessments on the following schedule: The history, civics, and geography assessments at the middle and high school levels shall be available for use by districts no later than ~~((the))~~ the 2000-01 school year; the arts assessment

for middle and high school levels shall be available for use by districts no later than ~~((the))~~ the 2000-01 school year; and the health and fitness assessments for middle and high school levels shall be available no later than the 2001-02 school year. The elementary science assessment shall be available for use by districts not later than the 2001-02 school year. The commission or the superintendent, as applicable, shall upon request, provide opportunities for the education committees of the house of representatives and the senate to review the assessments and proposed modifications to the essential academic learning requirements before the modifications are adopted. By December 15, 1998, the commission on student learning shall recommend to the appropriate committees of the legislature a revised timeline for implementing these assessments and when the school districts should be required to participate. All school districts shall be required to participate in the history, civics, geography, arts, health, fitness, and elementary science assessments in the third year after the assessments are available to school districts.

To the maximum extent possible, the commission shall integrate knowledge and skill areas in development of the assessments.

(iv) Assessments for goals three and four of RCW 28A.150.210 shall be integrated in the essential academic learning requirements and assessments for goals one and two. Before the 1997-98 school year, the elementary assessment system in reading, writing, communications, and mathematics shall be optional. School districts that desire to participate before the 1997-98 school year shall notify the commission on student learning in a manner determined by the commission. Beginning in the 1997-98 school year, school districts shall be required to participate in the elementary assessment system for reading, writing, communications, and mathematics. Before the 2000-01 school year, participation by school districts in the middle school and high school assessment system for reading, writing, communications, mathematics, and science shall be optional. School districts that desire to participate before the 1998-99 school year shall notify the commission on student learning in a manner determined by the commission on student learning. Schools that desire to participate after the 1998-99 school year, shall notify the superintendent of public instruction in a manner determined by the superintendent. Beginning in the 2000-01 school year, all school districts shall be required to participate in the assessment system for reading, writing, communications, mathematics, and science.

(v) The commission on student learning may modify the essential academic learning requirements and the assessments for reading, writing, communications, mathematics, and science, as needed, before June 30, 1999. The commission shall, upon request, provide opportunities for the education committees of the house of representatives and the senate to review the assessments and proposed modifications to the essential academic learning requirements before the modifications are adopted.

(vi) The commission shall develop assessments that are directly related to the essential academic learning requirements, and are not biased toward persons with different learning styles, racial or ethnic backgrounds, or on the basis of gender;

(c) After a determination is made by the state board of education that the high school assessment system has been implemented and that it is sufficiently reliable and valid, successful completion of the high school assessment shall lead to a certificate of mastery. The certificate of mastery shall be obtained by most students at about the age of sixteen, and is evidence that the student has successfully mastered the essential academic learning requirements during his or her educational career. The certificate of mastery shall be required for graduation but shall not be the only requirement for graduation. The commission shall make recommendations to the state board of education regarding the relationship between the certificate of mastery and high school graduation requirements. Upon achieving the certificate of mastery, schools shall provide students with the opportunity to pursue career and educational objectives through educational pathways that emphasize integration of academic and vocational education. Educational pathways may include, but are not limited to, programs such as work-based learning, school-to-work transition, tech prep, vocational-technical education, running start, and preparation for technical college, community college, or university education. Any middle school, junior high school, or high school using educational pathways shall ensure that all participating students will continue to have access to the courses and instruction necessary to meet admission requirements at baccalaureate institutions. Students shall be allowed to enter the educational pathway of their choice. Before accepting a student into an educational pathway, the school shall inform the student's parent of the pathway chosen, the opportunities available to the student through the pathway, and the career objectives the student will have exposure to while pursuing the pathway. Parents and students dissatisfied with the opportunities available through the selected educational pathway shall be provided with the opportunity to transfer the student to any other pathway provided in the school. Schools may not develop educational pathways that retain students in high school beyond the date they are eligible to graduate, and may not require students who transfer between pathways to complete pathway requirements beyond the date the student is eligible to graduate;

(d) Consider methods to address the unique needs of special education students when developing the assessments in (b) and (c) of this subsection;

(e) Consider methods to address the unique needs of highly capable students when developing the assessments in (b) and (c) of this subsection;

(f) Develop recommendations on the time, support, and resources, including technical assistance, needed by schools and school districts to help students achieve the essential academic learning requirements. These recommendations shall include an estimate for the legislature, superintendent of public instruction, and governor on the expected cost of implementing the academic assessment system;

(g) Develop recommendations for consideration by the higher education coordinating board for adopting college and university entrance requirements for public school students that are consistent with the essential academic learning requirements and the certificate of mastery;

(h) Review current school district data reporting requirements for the purposes of accountability and meeting state information needs. The commission on student learning shall report recommendations to the joint select committee on education restructuring by September 15, 1996, on:

(i) What data is necessary to compare how school districts are performing before the essential academic learning requirements and the assessment system are implemented with how school districts are performing after the essential academic learning requirements and the assessment system are implemented; and

(ii) What data is necessary pertaining to school district reports under the accountability systems developed by the commission on student learning under this section;

(i) Recommend to the legislature, governor, state board of education, and superintendent of public instruction:

(i) A state-wide accountability system to monitor and evaluate accurately and fairly at elementary, middle, and high schools the level of learning occurring in individual schools and school districts with regard to the goals included in RCW 28A.150.210 (1) through (4). The accountability system must assess each school individually against its own baseline, schools with similar characteristics, and schools state-wide. The system shall include school-site, school district, and state-level accountability reports;

(ii) A school assistance program to help schools and school districts that are having difficulty helping students meet the essential academic learning requirements as measured by performance on the elementary, middle school, and high school assessments;

(iii) A system to intervene in schools and school districts in which significant numbers of students persistently fail to learn the essential academic learning requirements or meet the standards established for the elementary, middle school, and high school assessments; and

(iv) An awards program to provide incentives to school staff to help their students learn the essential academic learning requirements, with each school being assessed individually against its own baseline, schools with similar characteristics, and the state-wide average. Incentives shall be based on the rate of percentage change of students achieving the essential academic learning requirements and progress on meeting the state-wide average. School staff shall determine how the awards will be spent.

The commission shall make recommendations regarding a state-wide accountability system for reading in grades kindergarten through four by November 1, 1997. Recommendations for an accountability system in the other subject areas and grade levels shall be made no later than June 30, 1999;

(j) Report annually by December 1st to the legislature, the governor, the superintendent of public instruction, and the state board of education on the progress, findings, and recommendations of the commission; and

(k) Make recommendations to the legislature and take other actions necessary or desirable to help students meet the student learning goals.

(4) The commission shall coordinate its activities with the state board of education and the office of the superintendent of public instruction.

(5) The commission shall seek advice broadly from the public and all interested educational organizations in the conduct of its work, including holding periodic regional public hearings.

(6) The commission shall select an entity to provide staff support and the office of the superintendent of public instruction shall provide administrative oversight and be the fiscal agent for the commission. The commission may direct the office of the superintendent of public instruction to enter into subcontracts, within the commission's resources, with school districts, teachers, higher education faculty, state agencies, business organizations, and other individuals and organizations to assist the commission in its deliberations.

(7) Members of the commission shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(8)(a) By September 30, 1997, the commission on student learning, the state board of education, and the superintendent of public instruction shall jointly present recommendations to the education committees of the house of representatives and the senate regarding the high school assessments, the certificate of mastery, and high school graduation requirements.

In preparing recommendations, the commission on student learning shall convene an ad hoc working group to address questions, including:

(i) What type of document shall be used to identify student performance and achievement and how will the document be described?

(ii) Should the students be required to pass the high school assessments in all skill and content areas, or only in select skill and content areas, to graduate?

(iii) How will the criteria for establishing the standards for passing scores on the assessments be determined?

(iv) What timeline should be used in phasing-in the assessments as a graduation requirement?

(v) What options may be used in demonstrating how the results of the assessments will be displayed in a way that is meaningful to students, parents, institutions of higher education, and potential employers?

(vi) Are there other or additional methods by which the assessments could be used to identify achievement such as endorsements, standards of proficiency, merit badges, or levels of achievement?

(vii) Should the assessments and certificate of mastery be used to satisfy college or university entrance criteria for public school students? If yes, how should these methods be phased-in?

(b) The ad hoc working group shall report its recommendations to the commission on student learning, the state board of education, and the superintendent of public instruction by June 15, 1997. The commission shall report the ad hoc working group's recommendations to the education committees of the house of representatives and senate by July 15, 1997. Final recommendations of the commission on student learning, the state board of education, and the superintendent of public instruction shall be presented to the education committees of the house of representatives and the senate by September 30, 1997.

(9) The Washington commission on student learning shall expire on June 30, 1999.

**NEW SECTION.** Sec. 2. A new section is added to chapter 28A.600 RCW to read as follows:

Any middle school, junior high school, or high school using educational pathways shall ensure that all participating students will continue to have access to the courses and instruction necessary to meet admission requirements at baccalaureate institutions. Students shall be allowed to enter the educational pathway of their choice. Before accepting a student into an educational pathway, the school shall inform the student's parent of the pathway chosen, the opportunities available to the student through the pathway, and the career objectives the student will have exposure to while pursuing the pathway. Parents and students dissatisfied with the opportunities available through the selected educational pathway shall be provided with the opportunity to transfer the student to any other pathway provided in the school. Schools may not develop educational pathways that retain students in high school beyond the date they are eligible to graduate, and may not require students who transfer between pathways to complete pathway requirements beyond the date the student is eligible to graduate. Educational pathways may include, but are not limited to, programs such as work-based learning, school-to-work transition, tech prep, vocational-technical education, running start, and preparation for technical college, community college, or university education.

**NEW SECTION.** Sec. 3. Section 1 of this act expires June 30, 1999.

Passed the House February 17, 1998.

Passed the Senate March 6, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

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## CHAPTER 226

[House Bill 2402]

### COUNTY CLERK RECORDS—ELECTRONIC REPRODUCTIONS—COPIES

AN ACT Relating to the records of the county clerk; and amending RCW 36.23.065 and 36.23.067.

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

**Sec. 1.** RCW 36.23.065 and 1981 c 277 s 10 are each amended to read as follows:

Notwithstanding any other law relating to the destruction of court records, the county clerk may cause to be destroyed all documents, records, instruments, books, papers, depositions, and transcripts, in any action or proceeding in the superior court, or otherwise filed in his or her office pursuant to law, if all of the following conditions exist:

(1) The county clerk maintains for the use of the public a photographic film, microphotographic, photostatic, electronic, or similar reproduction of each document, record, instrument, book, paper, deposition, or transcript so destroyed: PROVIDED, That all receipts and canceled checks filed by a personal representative pursuant to RCW 11.76.100 may be removed from the file by order of the court and destroyed the same as an exhibit pursuant to RCW 36.23.070.

(2) At the time of the taking of ~~((said))~~ the photographic film, microphotographic, photostatic, electronic, or similar reproduction, the county clerk or other person under whose direction and control the same was taken, attached thereto, or to the sealed container in which the same was placed and has been kept, or incorporated in ~~((said))~~ the photographic film, microphotographic, photostatic, electronic, or similar reproduction, a certification that the copy is a correct copy of the original, or of a specified part thereof, as the case may be, the date on which taken, and the fact it was taken under ~~((his))~~ the clerk's direction and control. The certificate must be under the official seal of the certifying officer, if there be any, or if ~~((he be))~~ the certifying officer is the clerk of a court having a seal, under the seal of such court.

(3) The county clerk promptly seals and stores at least one original or negative of each such photographic film, microphotographic, photostatic, electronic, or similar reproduction in such manner and place as reasonably to assure its preservation indefinitely against loss, theft, defacement, or destruction. Electronic reproductions are acceptable media for this purpose if one of the following conditions exists:

(a) The electronic reproductions are continuously updated and, if necessary, transferred to another medium to ensure that they are accessible through contemporary and supported electronic or computerized systems; or

(b) The electronic reproductions are scheduled to be reproduced on photographic film, microphotographic, photostatic, or similar media for indefinite preservation.

(4) When copies of public records of the county clerk are transferred to the state archives for security storage, the state archives may only provide certified copies of those records with the written permission of the county clerk who is custodian of those records. When so transferred and authorized, the copies of the public records concerned shall be made by the state archives, which certification shall have the same force and effect as though made by the county clerk who is custodian of the record. If there is a statutory fee for the reproduction of the document, contracts can be made between the county clerk and the state archives



for reproduction and certification of the copies, however no certification authority may be transferred except as provided in this subsection and for records of abolished or discontinued offices or agencies under chapter 40.14 RCW.

Sec. 2. RCW 36.23.067 and 1963 c 4 s 36.23.067 are each amended to read as follows:

Any print, whether enlarged or not, from any photographic film, including any photographic plate, microphotographic film, or photostatic negative or similar reproduction, or from any electronic record, of any original record, document, instrument, book, paper, deposition, or transcript which has been processed in accordance with the provisions of RCW 36.23.065, and has been certified by the county clerk under his or her official seal as a true copy, may be used in all instances, including introduction in evidence in any judicial or administrative proceeding, that the original record, document, instrument, book, paper, deposition, or transcript might have been used, and shall have the full force and effect of ~~((said))~~ the original for all purposes.

Passed the House February 10, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

## CHAPTER 227

[House Bill 2463]

### GARNISHEE PROCESSING FEES

AN ACT Relating to processing fees for writs of garnishments that are not writs for continuing lien on earnings; and amending RCW 6.27.005, 6.27.095, 6.27.100, and 6.27.110.

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

Sec. 1. RCW 6.27.005 and 1997 c 296 s 1 are each amended to read as follows:

The legislature recognizes that ~~((the employer has no responsibility in the situation leading to wage garnishment of the employee and that the employer is in fact helping the state and other businesses when the wages of employees are garnished. It is not the intent of the legislature to interfere in the employer/employee relationship. The legislature also recognizes that wage garnishment orders create an administrative burden for employers and that the state should do everything in its power to reduce or offset this burden))~~ a garnishee defendant has no responsibility for the situation leading to the garnishment of a debtor's wages, funds, or other property, but that the garnishment process is necessary for the enforcement of obligations debtors otherwise fail to honor, and that garnishment procedures benefit the state and the business community as creditors. The state should take whatever measures that are reasonably necessary to reduce or offset the administrative burden on the garnishee defendant consistent with the goal of effectively enforcing the debtor's unpaid obligations.

Sec. 2. RCW 6.27.095 and 1997 c 296 s 3 are each amended to read as follows:

(1) The garnishee of a writ for a continuing lien on earnings may deduct a processing fee from the remainder of the obligor's earnings after withholding the required amount under the ~~((garnishment order))~~ writ. The processing fee may not exceed twenty dollars for the first ~~((disbursement. If the garnishment is a continuing lien on earnings, the garnishee may deduct a processing fee of twenty dollars for the first disbursement))~~ answer and ten dollars at the time the garnishee submits the second answer.

(2) If the writ of garnishment is not a writ for a continuing lien on earnings, the garnishee is entitled to check or money order payable to the garnishee in the amount of twenty dollars at the time the writ of garnishment is served on the garnishee as required under RCW 6.27.110(1).

Sec. 3. RCW 6.27.100 and 1997 c 296 s 2 are each amended to read as follows:

The writ shall be substantially in the following form: PROVIDED, That if the writ is issued under a court order or judgment for child support, the following statement shall appear conspicuously in the caption: "This garnishment is based on a judgment or court order for child support": AND PROVIDED FURTHER, That if the garnishment is for a continuing lien, the form shall be modified as provided in RCW 6.27.340: AND PROVIDED FURTHER, That if the writ is not directed to an employer for the purpose of garnishing a defendant's earnings, the paragraph relating to the earnings exemption may be omitted and the paragraph relating to the deduction of processing fees may be omitted:

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

.....  
Plaintiff,  
vs.

No. . . . .

.....  
Defendant  
.....  
Garnishee

WRIT OF  
GARNISHMENT

THE STATE OF WASHINGTON TO: .....  
Garnishee

AND TO: .....  
Defendant

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

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

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

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

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

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

IF THIS IS A WRIT FOR A CONTINUING LIEN ON EARNINGS, YOU MAY DEDUCT A PROCESSING FEE FROM THE REMAINDER OF THE

EMPLOYEE'S EARNINGS AFTER WITHHOLDING UNDER THIS WRIT. THE PROCESSING FEE MAY NOT EXCEED TWENTY DOLLARS FOR THE FIRST ANSWER AND TEN DOLLARS AT THE TIME YOU SUBMIT THE SECOND ANSWER.

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

YOUR FAILURE TO ANSWER THIS WRIT AS COMMANDED WILL RESULT IN A JUDGMENT BEING ENTERED AGAINST YOU FOR THE FULL AMOUNT OF THE PLAINTIFF'S CLAIM AGAINST THE DEFENDANT WITH ACCRUING INTERESTS AND COSTS WHETHER OR NOT YOU OWE ANYTHING TO THE DEFENDANT.

Witness, the Honorable . . . . ., Judge of the Superior Court, and the seal thereof, this . . . . day of . . . . ., 19. . .

[Seal]

.....  
Attorney for  
Plaintiff (or  
Plaintiff,  
if no attorney)

.....  
Clerk of  
Superior  
Court

.....  
Address

.....  
By  
.....  
Address"

Sec. 4. RCW 6.27.110 and 1997 c 296 s 4 are each amended to read as follows:

(1) Service of the writ of garnishment on the garnishee is invalid unless the writ is served together with: (a) Four answer forms as prescribed in RCW 6.27.190; ~~((and))~~ (b) three stamped envelopes addressed respectively to the clerk of the court issuing the writ, the attorney for the plaintiff (or to the plaintiff if the plaintiff has no attorney), and the defendant; and (c) check or money order made payable to the garnishee in the amount of twenty dollars for the answer fee if the writ of garnishment is not a writ for a continuing lien on earnings.

(2) Except as provided in RCW 6.27.080 for service on a bank, savings and loan association, or credit union, the writ of garnishment shall be mailed to the garnishee by certified mail, return receipt requested, addressed in the same manner as a summons in a civil action, and will be binding upon the garnishee on the day set forth on the return receipt. In the alternative, the writ shall be served by the sheriff of the county in which the garnishee lives or has its place of business or by any person qualified to serve process in the same manner as a summons in a civil action is served.

(3) If a writ of garnishment is served by a sheriff, the sheriff shall file with the clerk of the court that issued the writ a signed return showing the time, place, and manner of service and that the writ was accompanied by answer forms, addressed envelopes, and check or money order if required by this section, and noting thereon fees for making the service. If service is made by any person other than a sheriff, such person shall file an affidavit including the same information and showing qualifications to make such service. If a writ of garnishment is served by mail, the person making the mailing shall file an affidavit showing the time, place, and manner of mailing and that the writ was accompanied by answer forms and addressed envelopes, and check or money order if required by this section, and shall attach the return receipt to the affidavit.

Passed the House March 9, 1998.

Passed the Senate March 5, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

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## CHAPTER 228

[Engrossed Substitute House Bill 2477]

### EMPLOYMENT AGENCIES—DEFINITION OF THEATRICAL AGENCY

AN ACT Relating to employment agencies; and amending RCW 19.31.020.

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

**Sec. 1.** RCW 19.31.020 and 1993 c 499 s 1 are each amended to read as follows:

Unless a different meaning is clearly required by the context, the following words and phrases, as hereinafter used in this chapter, shall have the following meanings:

(1) "Employment agency" is synonymous with "agency" and shall mean any business in which any part of the business gross or net income is derived from a fee received from applicants, and in which any of the following activities are engaged in:

(a) The offering, promising, procuring, or attempting to procure employment for applicants;

(b) The giving of information regarding where and from whom employment may be obtained; or

(c) The sale of a list of jobs or a list of names of persons or companies accepting applications for specific positions, in any form.

In addition the term "employment agency" shall mean and include any person, bureau, employment listing service, employment directory, organization, or school which for profit, by advertisement or otherwise, offers, as one of its main objects or purposes, to procure employment for any person who pays for its services, or which collects tuition, or charges for service of any nature, where the main object of the person paying the same is to secure employment. It also includes any business that provides a resume to an individual and provides that

person with a list of names to whom the resume may be sent or provides that person with preaddressed envelopes to be mailed by the individual or by the business itself, if the list of names or the preaddressed envelopes have been compiled and are represented by the business as having job openings. The term "employment agency" shall not include labor union organizations, temporary service contractors, proprietary schools operating within the scope of activities for which the school is licensed under chapter 28C.10 RCW, nonprofit schools and colleges, career guidance and counseling services, employment directories that are sold in a manner that allows the applicant to examine the directory before purchase, theatrical agencies, farm labor contractors, or the Washington state employment agency.

(2) "Temporary service contractors" shall mean any person, firm, association, or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part time or temporary help basis to others.

(3) "Theatrical agency" means any person who, for a fee or commission, procures ~~((or attempts to procure))~~ on behalf of an individual or individuals, employment or engagements for circus, vaudeville, the variety field, the legitimate theater, motion pictures, radio, television, phonograph recordings, transcriptions, opera, concert, ballet, modeling, or other entertainments, exhibitions, or performances. The term "theatrical agency" does not include any person charging an applicant a fee prior to or in advance of:

(a) Procuring employment for the applicant;

(b) Giving or providing the applicant information regarding where or from whom employment may be obtained;

(c) Allowing or requiring the applicant to participate in any instructional class, audition, or career guidance or counseling; or

(d) Allowing the applicant to be eligible for employment through the person.

(4) "Farm labor contractor" means any person, or his agent, who, for a fee, employs workers to render personal services in connection with the production of any farm products, to, for, or under the direction of an employer engaged in the growing, producing, or harvesting of farm products, or who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing, producing, or harvesting of farm products or who provides in connection with recruiting, soliciting, supplying, or hiring workers engaged in the growing, producing, or harvesting of farm products, one or more of the following services: Furnishes board, lodging, or transportation for such workers, supervises, times, checks, counts, sizes, or otherwise directs or measures their work; or disburses wage payments to such persons.

(5) "Employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ a person through the medium or service of an employment agency.

(6) "Applicant", except when used to describe an applicant for an employment agency license, means any person, whether employed or unem-

ployed, seeking or entering into any arrangement for his employment or change of his employment through the medium or service of an employment agency.

(7) "Person" includes any individual, firm, corporation, partnership, association, company, society, manager, contractor, subcontractor, bureau, agency, service, office, or an agent or employee of any of the foregoing.

(8) "Director" shall mean the director of licensing.

(9) "Resume" means a document of the applicant's employment history that is approved, received, and paid for by the applicant.

(10) "Fee" means anything of value. The term includes money or other valuable consideration or services or the promise of money or other valuable consideration or services, received directly or indirectly by an employment agency from a person seeking employment, in payment for the service.

(11) "Employment listing service" means any business operated by any person that provides in any form, including written or verbal, lists of specified positions of employment available with any employer other than itself or that holds itself out to applicants as able to provide information about specific positions of employment available with any employer other than itself, and that charges a fee to the applicant for its services and does not set up interviews or otherwise intercede between employer and applicant.

(12) "Employment directory" means any business operated by any person that provides in any form, including written or verbal, lists of employers, does not provide lists of specified positions of employment, that holds itself out to applicants as able to provide information on employment in specific industries or geographical areas, and that charges a fee to the applicant for its services.

(13) "Career guidance and counseling service" means any person, firm, association, or corporation conducting a business that engages in any of the following activities:

(a) Career assessment, planning, or testing through individual counseling or group seminars, classes, or workshops;

(b) Skills analysis, resume writing, and preparation through individual counseling or group seminars, classes, or workshops;

(c) Training in job search or interviewing skills through individual counseling or group seminars, classes, or workshops: PROVIDED, That the career guidance and counseling service does not engage in any of the following activities:

(i) Contacts employers on behalf of an applicant or in any way intercedes between employer and applicant;

(ii) Provides information on specific job openings;

(iii) Holds itself out as able to provide referrals to specific companies or individuals who have specific job openings.

Passed the House March 7, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

**CHAPTER 229**

[House Bill 2557]

**OUT-OF-HOME PLACEMENT OF DEVELOPMENTALLY DISABLED CHILDREN—  
REVISIONS**

AN ACT Relating to technical clarifying changes to developmentally disabled children's out-of-home placement; and amending RCW 74.13.350, 13.34.270, and 74.13.021.

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

**Sec. 1.** RCW 74.13.350 and 1997 c 386 s 16 are each amended to read as follows:

It is the intent of the legislature that parents are responsible for the care and support of children with developmental disabilities. The legislature recognizes that, because of the intense support required to care for a child with developmental disabilities, the help of an out-of-home placement may be needed. It is the intent of the legislature that, when the sole reason for the out-of-home placement is the child's developmental disability, such services be offered by the department to these children and their families through a voluntary placement agreement. In these cases, the parents shall retain legal custody of the child.

As used in this section, "voluntary placement agreement" means a written agreement between the department and a child's parent or legal guardian authorizing the department to place the child in a licensed facility. Under the terms of this agreement, the parent or legal guardian shall retain legal custody and the department shall be responsible for the child's placement and care. The agreement shall at a minimum specify the legal status of the child and the rights and obligations of the parent or legal guardian, the child, and the department while the child is in placement. The agreement must be signed by the child's parent or legal guardian and the department to be in effect, except that an agreement regarding an Indian child shall not be valid unless executed in writing before the court and filed with the court as provided in RCW 13.34.245. Any party to a voluntary placement agreement may terminate the agreement at any time. Upon termination of the agreement, the child shall be returned to the care of the child's parent or legal guardian unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130.

As used in this section, "out-of-home placement" and "out-of-home care" mean the placement of a child in a foster family home or group care facility licensed under chapter 74.15 RCW.

Whenever the department places a child in out-of-home care under a voluntary placement pursuant to this section, the department shall have the responsibility for the child's placement and care. The department shall develop a permanency plan of care for the child no later than sixty days from the date that the department assumes responsibility for the child's placement and care. Within the first one hundred eighty days of the placement, the department shall obtain a judicial determination pursuant to RCW 13.04.030(1)(j) and 13.34.270 that the



placement is in the best interests of the child. If the child's out-of-home placement ends before one hundred eighty days have elapsed, no judicial determination under RCW 13.04.030(1)(b) is required. The permanency planning hearings shall review whether the child's best interests are served by continued out-of-home placement and determine the future legal status of the child.

The department shall provide for periodic administrative reviews as required by federal law. A review may be called at any time by either the department, the parent, or the legal guardian.

Nothing in this section shall prevent the department from filing a dependency petition if there is reason to believe that the child is a dependent child as defined in RCW 13.34.030.

The department shall adopt rules providing for the implementation of chapter 386, Laws of 1997 and the transfer of responsibility for out-of-home placements from the dependency process under chapter 13.34 RCW to the process under this chapter.

It is the intent of the legislature that the department undertake voluntary out-of-home placement in cases where the child's developmental disability is such that the parent, guardian, or legal custodian is unable to provide the necessary care for the child, and the parent, guardian, or legal custodian has determined that the child would benefit from placement outside of the home. If the department does not accept a voluntary placement agreement signed by the parent, a petition may be filed and an action pursued under chapter 13.34 RCW. The department shall inform the parent, guardian, or legal custodian in writing of their right to civil action under chapter 13.34 RCW.

**Sec. 2.** RCW 13.34.270 and 1997 c 386 s 19 are each amended to read as follows:

(1) Whenever the department of social and health services places a developmentally disabled child in out-of-home care pursuant to RCW 74.13.350, the department shall obtain a judicial determination within one hundred eighty days of the placement that continued placement is in the best interests of the child. If the child's out-of-home placement ends before one hundred eighty days have elapsed, no judicial determination is required.

(2) To obtain the judicial determination, the department shall file a petition alleging that there is located or residing within the county a child who has a developmental disability, as defined in RCW 71A.10.020, and that the child has been placed in out-of-home care pursuant to RCW 74.13.350. The petition shall request that the court review the child's placement, make a determination that continued placement is in the best interests of the child, and take other necessary action as provided in this section. The petition shall contain the name, date of birth, and residence of the child and the names and residences of the child's parent or legal guardian who has agreed to the child's placement in out-of-home care. Reasonable attempts shall be made by the department to ascertain and set forth in the petition the identity, location, and custodial status of any parent who is not

a party to the placement agreement and why that parent cannot assume custody of the child.

(3) Upon filing of the petition, the clerk of the court shall schedule the petition for a hearing to be held no later than fourteen calendar days after the petition has been filed. The department shall provide notification of the time, date, and purpose of the hearing to the parent or legal guardian who has agreed to the child's placement in out-of-home care. The department shall also make reasonable attempts to notify any parent who is not a party to the placement agreement, if the parent's identity and location is known. Notification under this section may be given by the most expedient means, including but not limited to, mail, personal service, telephone, and telegraph.

(4) The court shall appoint a guardian ad litem for the child as provided in RCW 13.34.100, unless the court for good cause finds the appointment unnecessary.

(5) Permanency planning hearings shall be held as provided in this subsection. At the hearing, the court shall review whether the child's best interests are served by continued out-of-home placement and determine the future legal status of the child.

(a) For children age ten and under, a permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree or guardianship order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the child's current placement episode.

(b) For children over age ten, a permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least fifteen months and an adoption decree or guardianship order has not previously been entered. The hearing shall take place no later than eighteen months following commencement of the current placement episode.

(c) No later than ten working days before the permanency planning hearing, the department shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties. The plan shall be directed toward securing a safe, stable, and permanent home for the child as soon as possible. The plan shall identify one of the following outcomes as the primary goal and may also identify additional outcomes as alternative goals: Return of the child to the home of the child's parent or legal guardian; adoption; guardianship; or long-term out-of-home care, until the child is age eighteen, with a written agreement between the parties and the child's care provider.

(d) If a goal of long-term out-of-home care has been achieved before the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remains appropriate. In cases where the primary permanency planning goal has not ~~((be {been}))~~ been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal.

(e) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the voluntary placement agreement is terminated.

(6) Any party to the voluntary placement agreement may terminate the agreement at any time. Upon termination of the agreement, the child shall be returned to the care of the child's parent or legal guardian, unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130. The department shall notify the court upon termination of the voluntary placement agreement and return of the child to the care of the child's parent or legal guardian. Whenever a voluntary placement agreement is terminated, an action under this section shall be dismissed.

(7) This section does not prevent the department from filing a dependency petition if there is reason to believe that the child is a dependent child as defined in RCW 13.34.030. An action filed under this section shall be dismissed upon the filing of a dependency petition regarding a child who is the subject of the action under this section.

**Sec. 3.** RCW 74.13.021 and 1997 c 386 s 15 are each amended to read as follows:

As used in this chapter, "developmentally disabled (~~dependent~~) child" is a child who has a developmental disability as defined in RCW 71A.10.020 and whose parent, guardian, or legal custodian and with the department mutually agree that services appropriate to the child's needs can not be provided in the home.

Passed the House March 9, 1998.

Passed the Senate February 23, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

## CHAPTER 230

[Substitute House Bill 2822]

### MEDICAL DECISIONS BY THE DEPARTMENT OF LABOR AND INDUSTRIES— EXEMPTION FROM RULE-MAKING REGULATIONS

AN ACT Relating to exempting department of labor and industries' medical coverage decisions from rule-making requirements; and amending RCW 51.04.030.

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

**Sec. 1.** RCW 51.04.030 and 1997 c 325 s 2 are each amended to read as follows:

(1) The director shall supervise the providing of prompt and efficient care and treatment, including care provided by physician assistants governed by the provisions of chapters 18.57A and 18.71A RCW, acting under a supervising physician, and including chiropractic care, to workers injured during the course

of their employment at the least cost consistent with promptness and efficiency, without discrimination or favoritism, and with as great uniformity as the various and diverse surrounding circumstances and locations of industries will permit and to that end shall, from time to time, establish and adopt and supervise the administration of printed forms, rules, regulations, and practices for the furnishing of such care and treatment: PROVIDED, That the medical coverage decisions of the department do not constitute a "rule" as used in RCW 34.05.010(16), nor are such decisions subject to the rule-making provisions of chapter 34.05 RCW except that criteria for establishing medical coverage decisions shall be adopted by rule after consultation with the workers' compensation advisory committee established in RCW 51.04.110: PROVIDED FURTHER, That(;-) the department may recommend to an injured worker particular health care services and providers where specialized treatment is indicated or where cost effective payment levels or rates are obtained by the department: AND PROVIDED FURTHER, That the department may enter into contracts for goods and services including, but not limited to, durable medical equipment so long as state-wide access to quality service is maintained for injured workers.

(2) The director shall, in consultation with interested persons, establish and, in his or her discretion, periodically change as may be necessary, and make available a fee schedule of the maximum charges to be made by any physician, surgeon, chiropractor, hospital, druggist, physicians' assistants as defined in chapters 18.57A and 18.71A RCW, acting under a supervising physician or other agency or person rendering services to injured workers. The department shall coordinate with other state purchasers of health care services to establish as much consistency and uniformity in billing and coding practices as possible, taking into account the unique requirements and differences between programs. No service covered under this title, including services provided to injured workers, whether aliens or other injured workers, who are not residing in the United States at the time of receiving the services, shall be charged or paid at a rate or rates exceeding those specified in such fee schedule, and no contract providing for greater fees shall be valid as to the excess. The establishment of such a schedule, exclusive of conversion factors, does not constitute "agency action" as used in RCW 34.05.010(3), nor does such a fee schedule constitute a "rule" as used in RCW 34.05.010(~~(15)~~) (16).

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

Passed the House February 13, 1998.  
Passed the Senate March 4, 1998.  
Approved by the Governor March 30, 1998.  
Filed in Office of Secretary of State March 30, 1998.

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## CHAPTER 231

[Engrossed Second Substitute House Bill 2880]

### TASK FORCE ON AGENCY VENDOR CONTRACTING PRACTICES

AN ACT Relating to state agency personal service contract guidelines; creating new sections; and providing an expiration date.

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

**NEW SECTION.** Sec. 1. The legislature finds that the practice of engaging nonprofit entities to provide social services by use of fee-for-services and/or client services contracts has become necessary to effective state agency operations. The legislature further finds that there is a need to fundamentally examine how state contracts of this type are managed. Thus, the legislature intends that a comprehensive study take place that will identify methods for improving state-wide practices relating to fee-for-services and client services contracts.

**NEW SECTION.** Sec. 2. The definitions in this section apply throughout this act, unless the context clearly requires otherwise.

(1) "Agency" means every state office, department, division, bureau, board, committee, or other state agency.

(2) "Task force" means the task force on agency vendor contracting practices.

(3) "Contractor" means any nonprofit entity holding a fee-for-services and/or client services contract or grant for the provision of social services with the state of Washington, as defined in chapter 39.29 RCW.

(4) "Contract" means any fee-for-services and/or client services contract or grant for the provision of social services as defined in chapter 39.29 RCW.

**NEW SECTION.** Sec. 3. A task force on agency vendor contracting practices is established. The task force shall be convened by the office of financial management and shall be composed of nine members to be appointed by the director of the office of financial management. Two members of the task force shall be chosen as representatives of contractors. Two members of the task force shall be chosen for their personal work experiences as state employees responsible for administering contracts. All other task force members shall be selected for their knowledge and experience with state agency practices governing contracts. The director of the office of financial management shall appoint a chair from among the members of the task force. The task force shall invite and incorporate the participation of interested legislative members.

**NEW SECTION.** Sec. 4. (1) The task force shall review and propose legislative and administrative recommendations for the following issues:

(a) The adequacy of chapter 39.29 RCW in governing agency contract management. Such a review shall include, but is not limited to, whether the exemptions contained in RCW 39.29.040 (4) and (6) are appropriate in maintaining agency oversight and accountability for moneys used to engage contractors;

(b) Process improvements that ensure adequacy of contract oversight and provide accountability for taxpayer moneys, including the specific roles of the office of financial management and other state agencies in ensuring the accountability of public funds;

(c) The appropriate level of state reimbursement which will determine which contractors are eligible to be audited by the office of the state auditor using his/her authority under RCW 43.88.570. The task force shall additionally recommend appropriate funding resources for the office of the state auditor to exercise its authority to audit nonprofit corporations who provide personal services to a state agency or to clients of a state agency, under chapter 43.09 RCW, and nongovernmental entities under RCW 43.88.570;

(d) Whether uniform contract guidelines as exemplified by those adopted in other states, such as Texas, are appropriate or necessary, and the adequacy of current contract requirements and practices for contractor selection and award, contract compliance with state and federal standards, contract management and monitoring, accounting methods, payment mechanisms, postcontract procedures, contract legal remedies and performance audits, sanctions to ensure contract compliance, and financial reporting.

(2) The task force may utilize a cost-benefit analysis in preparing its recommendations. The task force shall develop proposed procedures, policies, and guidelines, and, if necessary, proposed legislation or administrative rules, to address the issues of its review.

**NEW SECTION. Sec. 5.** The task force, where feasible, shall collaborate with individuals from the public and private sector and may ask such persons to establish an advisory committee. Agencies shall cooperate with the office of financial management and provide the task force with support and assistance necessary to carry out the purposes of this act. The task force may consider the suggestions of agencies in preparing its recommendations, including any findings and information provided by the joint legislative audit and review committee.

**NEW SECTION. Sec. 6.** The task force, where feasible, shall use office of financial management staff and facilities. The office of financial management may hire additional staff with specific technical expertise if such expertise is necessary to carry out the mandates of the study in this act. Each member of the task force is eligible to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

**NEW SECTION. Sec. 7.** By November 1, 1999, the task force shall report its findings to the director of financial management, to the house of representatives vendor contracting and services select committee or to the most

appropriate house of representatives standing committee in the event that the vendor contracting and services select committee no longer exists, and to the senate committee on government operations.

**NEW SECTION.** Sec. 8. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION.** Sec. 9. This act expires January 1, 2000.

**NEW SECTION.** Sec. 10. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.

Passed the House March 10, 1998.

Passed the Senate March 6, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

## CHAPTER 232

[Engrossed Second Substitute House Bill 2881]

### AUDITS OF NONGOVERNMENTAL ENTITIES WITH STATE CONTRACTS

AN ACT Relating to audits of state contractors by the state auditor; amending RCW 43.88.570; adding new sections to chapter 43.09 RCW; and creating new sections.

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

**NEW SECTION.** Sec. 1. The legislature finds that the state auditor lacks the needed authority to investigate the finances of state nongovernmental contractors. The legislature further finds that current contract oversight and management procedures cannot ensure that services under contract are delivered effectively and efficiently. Therefore, the legislature intends to enhance the authority of the state auditor to audit entities that provide services to the state or its clients under contract with state agencies.

Sec. 2. RCW 43.88.570 and 1997 c 374 s 3 are each amended to read as follows:

(1) Each state agency shall submit a report to the office of the state auditor listing each nongovernment entity that received over three hundred thousand dollars in state moneys during the previous fiscal year under contract with the agency for purposes related to the provision of social services. The report must be submitted by September 1 each year, and must be in a form prescribed by the office of the state auditor.

(2) The office of the state auditor shall select ~~((two groups of entities from the reports for audit as follows:~~

~~—(a) The first group shall be selected))~~ at random a group of entities from the reports using a procedure prescribed by the office of the state auditor. The office of the state auditor shall ensure that the number of entities selected under this

subsection (2)((a)) each year is sufficient to ensure a statistically representative sample of all reported entities.

~~((b) The second group shall be selected based on a risk assessment of entities conducted by the office of the state auditor in consultation with state agencies. The office of the state auditor shall consider, at a minimum, the following factors when conducting risk assessments: Findings from previous audits; decentralization of decision making and controls; turnover in officials and key personnel; changes in management structure or operations; and the presence of new programs, technologies, or funding sources.))~~

(3) Each entity selected under subsection (2) of this section shall be required to complete a comprehensive entity-wide audit in accordance with generally accepted government auditing standards. The audit shall be completed by, or under the supervision of, a certified public accountant licensed in this state. The audit shall determine, at a minimum, whether:

(a) The financial statements of the entity are presented fairly in all material respects in conformity with generally accepted accounting principles;

(b) The schedule of expenditures of state moneys is presented fairly in all material respects in relation to the financial statements taken as a whole;

(c) Internal accounting controls exist and are effective; and

(d) The entity has complied with laws, regulations, and contract and grant provisions that have a direct and material effect on performance of the contract and the expenditure of state moneys.

(4) The office of the state auditor shall also select a second group based on a risk assessment of entities conducted by the office of the state auditor in consultation with state agencies. The office of the state auditor shall consider, at a minimum, the following factors when conducting risk assessments: Findings from audits of entities under contract with the state to provide services for the same state or federal program; findings from previous audits; decentralization of decision making and controls; turnover in officials and key personnel; changes in management structure or operations; and the presence of new programs, technologies, or funding sources.

(5) The office of the state auditor is required to complete a comprehensive entity-wide audit, in accordance with generally accepted government auditing standards, of each entity selected under subsection (4) of this section. The office of the state auditor may procure the services of a certified public accountant to perform such an audit, as set forth under RCW 43.09.045. The audit shall determine, at a minimum, whether:

(a) The financial statements of the entity are presented fairly in all material respects in conformity with generally accepted accounting principles;

(b) The schedule of expenditures of state moneys is presented fairly in all material respects in relation to the financial statements taken as a whole;

(c) Internal accounting controls exist and are effective; and



(d) The entity has complied with statutes, rules, regulations, and contract and grant provisions that have a direct and material effect on performance of the contract and the expenditure of state moneys.

(6) The office of the state auditor shall prescribe policies and procedures for the conduct of audits under this section. The office of the state auditor shall deem single audits completed in compliance with federal requirements to be in fulfillment of the requirements of this section if the audit meets the requirements of subsection (3)(a) through (d) or subsection (5)(a) through (d) of this section. If the entity is selected under subsection (4) of this section, the office of the state auditor shall review the single audit to determine if there is evidence of misuse of public moneys.

~~((5))~~ (7) Completed audits must be delivered to the office of the state auditor and the state agency by April 1 in the year following the selection of the entity for audit. Entities must resolve any findings contained in the audit within six months of the delivery of the audit. Entities may not enter into new contracts with state agencies until all major audit findings are resolved.

~~((6))~~ (8) Nothing in this section limits the authority of the state auditor to carry out statutorily and contractually prescribed powers and duties.

NEW SECTION. Sec. 3. A new section is added to chapter 43.09 RCW to read as follows:

The state auditor may, where there is reasonable cause to believe that a misuse of state moneys has occurred, conduct an audit of financial and legal compliance of any entity that receives public moneys through contract or grant in return for services. This authority includes examinations of not-for-profit corporations who provide personal services to a state agency or to clients of a state agency. Such a financial audit shall be performed in a manner consistent with this chapter, and may be performed according to an agreed upon procedures engagement as in the existing 1998 standards of the American institute of certified public accountants professional standards section 600.

The state auditor may charge the contracting agency, whether state or local, for the costs of an audit of a not-for-profit corporation that receives public moneys through contract or grant in return for services. Any contracting agency that is responsible to the state auditor for such costs shall use due diligence to recover costs from the audited entity.

NEW SECTION. Sec. 4. A new section is added to chapter 43.09 RCW to read as follows:

If after a financial audit of an entity that receives public moneys under contract or grant in return for services, there is reasonable cause to believe that a criminal misuse of public moneys has occurred, the office of the state auditor, within thirty days from receipt of the report, shall deliver a copy of the report to the appropriate local prosecuting authority.

**NEW SECTION.** Sec. 5. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.

Passed the House March 10, 1998.

Passed the Senate March 6, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

## CHAPTER 233

[Engrossed Substitute House Bill 2947]

### UNEMPLOYMENT COMPENSATION FOR PART-TIME FACULTY--REVISIONS

AN ACT Relating to unemployment compensation for part-time faculty; amending RCW 50.44.050 and 50.44.053; repealing 1995 c 296 s 4 (uncodified); creating new sections; and declaring an emergency.

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

**NEW SECTION.** Sec. 1. It is the intent of the legislature to clarify requirements related to unemployment compensation for employees at educational institutions.

The legislature finds that, unless clarified, Washington's unemployment compensation law may be out of conformity with the federal unemployment tax act, which finding poses a significant economic risk to the state's private employers and to the administration of the state's unemployment insurance system. It is the intent of the legislature, by the 1998, chapter . . . (this act) amendments to RCW 50.44.050 and 50.44.053, to bring Washington's unemployment compensation law into conformity with federal law in these areas of concern.

The legislature finds that some instructional staff at the state's educational institutions receive an appointment of employment for an indefinite period while others may face circumstances that do not provide a reasonable expectation of employment during an ensuing academic year or term.

Therefore, it is the intent of the legislature that the employment security department continue to make determinations of educational employees' eligibility for unemployment compensation for the period between academic years or terms based on a finding of reasonable assurance that the employee will have employment for the ensuing academic year or term and that the determination in each employee's case is made on an individual basis, consistent with federal guidelines. This determination must take into consideration contingencies that may exist in fact in an individual case. The 1998, chapter . . . (this act) amendment to RCW 50.44.053 is not intended to change the practice used by the employment security department when determining reasonable assurance. If, during fact-finding, there is a disagreement about whether an individual has reasonable assurance, the educational institution must provide documentation that reasonable assurance exists for that individual.

**Sec. 2.** RCW 50.44.050 and 1995 c 296 s 2 are each amended to read as follows:

Except as otherwise provided in subsections (1) through (4) of this section, benefits based on services in employment covered by or pursuant to this chapter shall be payable on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this title.

(1) Benefits based on service in an instructional, research, or principal administrative capacity for an educational institution shall not be paid to an individual for any week of unemployment which commences during the period between two successive academic years or between two successive academic terms within an academic year (or, when an agreement provides instead for a similar period between two regular but not successive terms within an academic year, during such period) if such individual performs such services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms. Any employee of a common school district who is presumed to be reemployed pursuant to RCW 28A.405.210 shall be deemed to have a contract for the ensuing term.

(2) Benefits shall not be paid based on services in any other capacity for an educational institution for any week of unemployment which commences during the period between two successive academic years or between two successive academic terms within an academic year, if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms: **PROVIDED**, That if benefits are denied to any individual under this subsection and that individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, the individual is entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subsection.

(3) Benefits shall not be paid based on any services described in subsections (1) and (2) of this section for any week of unemployment which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(4) Benefits shall not be paid (as specified in subsections (1), (2), or (3) of this section) based on any services described in subsections (1) or (2) of this section to any individual who performed such services in an educational institution while in the employ of an educational service district which is established pursuant to chapter 28A.310 RCW and exists to provide services to local school districts.

(5) As used in (~~subsection (1) of~~) this section, "academic year" means(~~with respect to services described in subsection (1) of this section performed by part-time faculty at community colleges and technical colleges~~): Fall, winter, spring, and summer quarters or comparable semesters unless, based upon objective criteria including enrollment and staffing, the quarter or comparable semester is not in fact a part of the academic year for the particular institution.

**Sec. 3.** RCW 50.44.053 and 1995 c 296 s 3 are each amended to read as follows:

The term "reasonable assurance," as used in RCW 50.44.050, means a written, verbal, or implied agreement that the employee will perform services in the same capacity during the ensuing academic year or term as in the first academic year or term. (~~However, with respect to services described in RCW 50.44.050(1) performed by part-time faculty for community colleges and technical colleges, the term "reasonable assurance" does not include an agreement that is contingent on enrollment, funding, or program changes.~~) A person shall not be deemed to be performing services "in the same capacity" unless those services are rendered under the same terms or conditions of employment in the ensuing year as in the first academic year or term.

**NEW SECTION.** Sec. 4. 1995 c 296 s 4 (uncodified) is repealed.

**NEW SECTION.** Sec. 5. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

**NEW SECTION.** Sec. 6. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the House March 3, 1998.

Passed the Senate March 12, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

## CHAPTER 234

[Substitute House Bill 3076]

### FOOD STAMP FRAUD INVESTIGATIONS— SHARING OF CONFIDENTIAL TAX INFORMATION

AN ACT Relating to sharing confidential tax information with the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers; and amending RCW 82.32.330.

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

**Sec. 1.** RCW 82.32.330 and 1996 c 184 s 5 are each amended to read as follows:

(1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information;

(b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

(c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense: **PROVIDED**, That data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter shall require any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency;

(e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer; and

(f) "Department" means the department of revenue or its officer, agent, employee, or representative.

(2) Returns and tax information shall be confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.

(3) The foregoing, however, shall not prohibit the department of revenue from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding;

(i) In respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under Title 82 RCW is a party in the proceeding; or

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding;

(b) Disclosing, subject to such requirements and conditions as the director shall prescribe by rules adopted pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person: PROVIDED, That tax information not received from the taxpayer shall not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

(c) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been either issued or filed and remains outstanding for a period of at least ten working days. The department shall not be required to disclose any information under this subsection if a taxpayer: (i) Has been issued a tax assessment; (ii) has been issued a warrant that has not been filed; and (iii) has entered a deferred payment arrangement with the department of revenue and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been filed with a court of record and remains outstanding;

(e) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(f) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(g) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;

(h) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement.

A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought;

(i) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state;

(j) Disclosing any such return or tax information to the Department of Justice, the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury, the Department of Defense, the United States Customs Service, the Coast Guard of the United States, and the United States Department of Transportation, or any authorized representative thereof, for official purposes;

(k) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(l) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection shall not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose; ~~((or))~~

(m) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.17 RCW or is a document maintained by a court of record not otherwise prohibited from disclosure; or

(n) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers.

(4)(a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals,

financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

(b) Before disclosure of any tax return or tax information under this subsection (4), the department shall, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence shall clearly identify the data, materials, or documents to be disclosed. The department may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court shall limit or deny the request of the department if the court determines that:

(i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

(d) The department shall reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

(e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

(5) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3)(f), (g), (h), (i), ~~((e))~~ (j), or (n) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person shall forfeit such office or employment and shall be incapable of holding any public office or employment in this state for a period of two years thereafter.



Passed the House February 12, 1998.  
 Passed the Senate March 12, 1998.  
 Approved by the Governor March 30, 1998.  
 Filed in Office of Secretary of State March 30, 1998.

**CHAPTER 235**

[Engrossed Senate Bill 5695]

**CRIMES INVOLVING FIREARMS—INCREASING PENALTIES**

AN ACT Relating to crimes involving firearms; 9.94A.400 and 9.94A.420; reenacting and amending RCW 9.94A.310

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

**Sec. 1.** RCW 9.94A.310 and 1997 c 365 s 3 and 1997 c 338 s 50 are each reenacted and amended to read as follows:

(1) **TABLE 1**  
**Sentencing Grid**

| SERIOUSNESS SCORE | OFFENDER SCORE                             |                      |                      |                      |                       |                      |                      |                       |                       |                      |
|-------------------|--|----------------------|----------------------|----------------------|-----------------------|----------------------|----------------------|-----------------------|-----------------------|----------------------|
|                   | 0  | 1                    | 2                    | 3                    | 4                     | 5                    | 6                    | 7                     | 8                     | 9 or more            |
| <b>XV</b>         | Life Sentence without Parole/Death Penalty |                      |                      |                      |                       |                      |                      |                       |                       |                      |
| <b>XIV</b>        | 23y4m<br>240-<br>320                       | 24y4m<br>250-<br>333 | 25y4m<br>261-<br>347 | 26y4m<br>271-<br>361 | 27y4m<br>281-<br>374  | 28y4m<br>291-<br>388 | 30y4m<br>312-<br>416 | 32y10m<br>338-<br>450 | 36y<br>370-<br>493    | 40y<br>411-<br>548   |
| <b>XIII</b>       | 14y4m<br>123-<br>220                       | 15y4m<br>134-<br>234 | 16y2m<br>144-<br>244 | 17y<br>154-<br>254   | 17y11m<br>165-<br>265 | 18y9m<br>175-<br>275 | 20y5m<br>195-<br>295 | 22y2m<br>216-<br>316  | 25y7m<br>257-<br>357  | 29y<br>298-<br>397   |
| <b>XII</b>        | 9y<br>93-<br>123                           | 9y11m<br>102-<br>136 | 10y9m<br>111-<br>147 | 11y8m<br>120-<br>160 | 12y6m<br>129-<br>171  | 13y5m<br>138-<br>184 | 15y9m<br>162-<br>216 | 17y3m<br>178-<br>236  | 20y3m<br>209-<br>277  | 23y3m<br>240-<br>318 |
| <b>XI</b>         | 7y6m<br>78-<br>102                         | 8y4m<br>86-<br>114   | 9y2m<br>95-<br>125   | 9y11m<br>102-<br>136 | 10y9m<br>111-<br>147  | 11y7m<br>120-<br>158 | 14y2m<br>146-<br>194 | 15y5m<br>159-<br>211  | 17y11m<br>185-<br>245 | 20y5m<br>210-<br>280 |
| <b>X</b>          | 5y<br>51-<br>68                            | 5y6m<br>57-<br>75    | 6y<br>62-<br>82      | 6y6m<br>67-<br>89    | 7y<br>72-<br>96       | 7y6m<br>77-<br>102   | 9y6m<br>98-<br>130   | 10y6m<br>108-<br>144  | 12y6m<br>129-<br>171  | 14y6m<br>149-<br>198 |
| <b>IX</b>         | 3y<br>31-<br>41                            | 3y6m<br>36-<br>48    | 4y<br>41-<br>54      | 4y6m<br>46-<br>61    | 5y<br>51-<br>68       | 5y6m<br>57-<br>75    | 7y6m<br>77-<br>102   | 8y6m<br>87-<br>116    | 10y6m<br>108-<br>144  | 12y6m<br>129-<br>171 |
| <b>VIII</b>       | 2y<br>21-<br>27                            | 2y6m<br>26-<br>34    | 3y<br>31-<br>41      | 3y6m<br>36-<br>48    | 4y<br>41-<br>54       | 4y6m<br>46-<br>61    | 6y6m<br>67-<br>89    | 7y6m<br>77-<br>102    | 8y6m<br>87-<br>116    | 10y6m<br>108-<br>144 |

|     |      |      |      |      |      |      |      |      |      |      |
|-----|------|------|------|------|------|------|------|------|------|------|
| VII | 18m  | 2y   | 2y6m | 3y   | 3y6m | 4y   | 5y6m | 6y6m | 7y6m | 8y6m |
|     | 15-  | 21-  | 26-  | 31-  | 36-  | 41-  | 57-  | 67-  | 77-  | 87-  |
|     | 20   | 27   | 34   | 41   | 48   | 54   | 75   | 89   | 102  | 116  |
| VI  | 13m  | 18m  | 2y   | 2y6m | 3y   | 3y6m | 4y6m | 5y6m | 6y6m | 7y6m |
|     | 12+- | 15-  | 21-  | 26-  | 31-  | 36-  | 46-  | 57-  | 67-  | 77-  |
|     | 14   | 20   | 27   | 34   | 41   | 48   | 61   | 75   | 89   | 102  |
| V   | 9m   | 13m  | 15m  | 18m  | 2y2m | 3y2m | 4y   | 5y   | 6y   | 7y   |
|     | 6-   | 12+- | 13-  | 15-  | 22-  | 33-  | 41-  | 51-  | 62-  | 72-  |
|     | 12   | 14   | 17   | 20   | 29   | 43   | 54   | 68   | 82   | 96   |
| IV  | 6m   | 9m   | 13m  | 15m  | 18m  | 2y2m | 3y2m | 4y2m | 5y2m | 6y2m |
|     | 3-   | 6-   | 12+- | 13-  | 15-  | 22-  | 33-  | 43-  | 53-  | 63-  |
|     | 9    | 12   | 14   | 17   | 20   | 29   | 43   | 57   | 70   | 84   |
| III | 2m   | 5m   | 8m   | 11m  | 14m  | 20m  | 2y2m | 3y2m | 4y2m | 5y   |
|     | 1-   | 3-   | 4-   | 9-   | 12+- | 17-  | 22-  | 33-  | 43-  | 51-  |
|     | 3    | 8    | 12   | 12   | 16   | 22   | 29   | 43   | 57   | 68   |
| II  |      | 4m   | 6m   | 8m   | 13m  | 16m  | 20m  | 2y2m | 3y2m | 4y2m |
|     | 0-90 | 2-   | 3-   | 4-   | 12+- | 14-  | 17-  | 22-  | 33-  | 43-  |
|     | Days | 6    | 9    | 12   | 14   | 18   | 22   | 29   | 43   | 57   |
| I   |      |      | 3m   | 4m   | 5m   | 8m   | 13m  | 16m  | 20m  | 2y2m |
|     | 0-60 | 0-90 | 2-   | 2-   | 3-   | 4-   | 12+- | 14-  | 17-  | 22-  |
|     | Days | Days | 5    | 6    | 8    | 12   | 14   | 18   | 22   | 29   |

NOTE: Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y) and months(m). Numbers in the second and third rows represent presumptive sentencing ranges in months, or in days if so designated. 12+ equals one year and one day.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by 75 percent.

(3) The following additional times shall be added to the presumptive sentence for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9A.10.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9A.10.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the presumptive sentence determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Five years for any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection.

(b) Three years for any felony defined under any law as a class B felony or with a maximum sentence of ten years, or both, and not covered under (f) of this subsection.

(c) Eighteen months for any felony defined under any law as a class C felony or with a maximum sentence of five years, or both, and not covered under (f) of this subsection.

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both, any and all firearm enhancements under this subsection shall be twice the amount of the enhancement listed.

(e) Notwithstanding any other provision of law, any and all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall ~~((not)) run ((concurrently with any))~~ consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter.

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony.

(g) If the presumptive sentence under this section exceeds the statutory maximum for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender as defined in RCW 9.94A.030. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(4) The following additional times shall be added to the presumptive sentence for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a deadly weapon as defined in this chapter other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the presumptive

sentence determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection.

(b) One year for any felony defined under any law as a class B felony or with a maximum sentence of ten years, or both, and not covered under (f) of this subsection.

(c) Six months for any felony defined under any law as a class C felony or with a maximum sentence of five years, or both, and not covered under (f) of this subsection.

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, any and all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed.

(e) Notwithstanding any other provision of law, any and all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall ~~((not)) run ((concurrently with any))~~ consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter.

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony.

(g) If the presumptive sentence under this section exceeds the statutory maximum for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender as defined in RCW 9A.030. If the addition of a deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(5) The following additional times shall be added to the presumptive sentence if the offender or an accomplice committed the offense while in a county jail or state correctional facility as that term is defined in this chapter and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility as that term is defined in this chapter, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the presumptive sentence determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(a)(1) (i) or (ii) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(a)(1) (iii), (iv), and (v);

(c) Twelve months for offenses committed under RCW 69.50.401(d).

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(6) An additional twenty-four months shall be added to the presumptive sentence for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

**Sec. 2.** RCW 9.94A.400 and 1996 c 199 s 3 are each amended to read as follows:

(1)(a) Except as provided in (b) or (c) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.120 and 9.94A.390(2)((~~f~~)) (g) or any other provision of RCW 9.94A.390. "Same criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. This definition applies in cases involving vehicular assault or vehicular homicide even if the victims occupied the same vehicle.

(b) Whenever a person is convicted of two or more serious violent offenses, as defined in RCW 9.94A.030, arising from separate and distinct criminal conduct, the sentence range for the offense with the highest seriousness level under RCW 9.94A.320 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the sentence range for other serious violent offenses shall be determined by using an offender score of zero. The sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under (b) of this subsection shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection.

(c) If an offender is convicted under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, then the offender shall serve consecutive sentences for each conviction of the felony crimes listed in this subsection, and for each firearm unlawfully possessed.

(2)(a) Except as provided in (b) of this subsection, whenever a person while under sentence of felony commits another felony and is sentenced to another term of confinement, the latter term shall not begin until expiration of all prior terms.

(b) Whenever a second or later felony conviction results in community supervision with conditions not currently in effect, under the prior sentence or sentences of community supervision the court may require that the conditions of community supervision contained in the second or later sentence begin during the immediate term of community supervision and continue throughout the duration of the consecutive term of community supervision.

(3) Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence of a felony, the sentence shall run concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced unless the court pronouncing the current sentence expressly orders that they be served consecutively.

(4) Whenever any person granted probation under RCW 9.95.210 or 9.92.060, or both, has the probationary sentence revoked and a prison sentence imposed, that sentence shall run consecutively to any sentence imposed pursuant to this chapter, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently.

(5) However, in the case of consecutive sentences, all periods of total confinement shall be served before any partial confinement, community service, community supervision, or any other requirement or conditions of any of the sentences. Except for exceptional sentences as authorized under RCW 9.94A.120(2), if two or more sentences that run consecutively include periods of community supervision, the aggregate of the community supervision period shall not exceed twenty-four months.

**Sec. 3.** RCW 9.94A.420 and 1983 c 115 s 13 are each amended to read as follows:

If the presumptive sentence duration given in the sentencing grid exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence. If the addition of a firearm or deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

Passed the Senate February 9, 1998.

Passed the House March 4, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

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## CHAPTER 236

[Engrossed Substitute Senate Bill 5769]

### THEFT OF MERCHANDISE PALLETS AND BEVERAGE CRATES

AN ACT Relating to theft of property; amending RCW 9A.56.010, 9A.56.170, 9A.56.140, and 9A.56.050; and prescribing penalties.

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

**Sec. 1.** RCW 9A.56.010 and 1997 c 346 s 2 are each amended to read as follows:

The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Appropriate lost or misdelivered property or services" means obtaining or exerting control over the property or services of another which the actor knows to have been lost or mislaid, or to have been delivered under a mistake as to identity of the recipient or as to the nature or amount of the property;

(2) "By color or aid of deception" means that the deception operated to bring about the obtaining of the property or services; it is not necessary that deception be the sole means of obtaining the property or services;

(3) "Access device" means any card, plate, code, account number, or other means of account access that can be used alone or in conjunction with another access device to obtain money, goods, services, or anything else of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument;

(4) "Deception" occurs when an actor knowingly:

(a) Creates or confirms another's false impression which the actor knows to be false; or

(b) Fails to correct another's impression which the actor previously has created or confirmed; or

(c) Prevents another from acquiring information material to the disposition of the property involved; or

(d) Transfers or encumbers property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or

(e) Promises performance which the actor does not intend to perform or knows will not be performed.

(5) "Deprive" in addition to its common meaning means to make unauthorized use or an unauthorized copy of records, information, data, trade secrets, or computer programs;

(6) "Obtain control over" in addition to its common meaning, means:

(a) In relation to property, to bring about a transfer or purported transfer to the obtainer or another of a legally recognized interest in the property; or

(b) In relation to labor or service, to secure performance thereof for the benefits of the obtainer or another;

(7) "Wrongfully obtains" or "exerts unauthorized control" means:

(a) To take the property or services of another;

(b) Having any property or services in one's possession, custody or control as bailee, factor, lessee, pledgee, renter, servant, attorney, agent, employee, trustee, executor, administrator, guardian, or officer of any person, estate, association, or corporation, or as a public officer, or person authorized by

agreement or competent authority to take or hold such possession, custody, or control, to secrete, withhold, or appropriate the same to his or her own use or to the use of any person other than the true owner or person entitled thereto; or

(c) Having any property or services in one's possession, custody, or control as partner, to secrete, withhold, or appropriate the same to his or her use or to the use of any person other than the true owner or person entitled thereto, where such use is unauthorized by the partnership agreement;

(8) "Merchandise pallet" means a wood or plastic carrier designed and manufactured as an item on which products can be placed prior to or during transport to retail outlets, manufacturers, or contractors, and affixed with language stating "property of . . .," "owned by . . .," or other markings or words identifying ownership;

(9) "Beverage crate" means a plastic or metal box-like container used by a manufacturer or distributor in the transportation or distribution of individually packaged beverages to retail outlets, and affixed with language stating "property of . . .," "owned by . . .," or other markings or words identifying ownership;

(10) "Owner" means a person, other than the actor, who has possession of or any other interest in the property or services involved, and without whose consent the actor has no authority to exert control over the property or services;

~~((9))~~ (11) "Receive" includes, but is not limited to, acquiring title, possession, control, or a security interest, or any other interest in the property;

~~((10))~~ (12) "Services" includes, but is not limited to, labor, professional services, transportation services, electronic computer services, the supplying of hotel accommodations, restaurant services, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam, and water;

~~((11))~~ (13) "Stolen" means obtained by theft, robbery, or extortion;

~~((12))~~ (14) "Subscription television service" means cable or encrypted video and related audio and data services intended for viewing on a home television by authorized members of the public only, who have agreed to pay a fee for the service. Subscription services include but are not limited to those video services presently delivered by coaxial cable, fiber optic cable, terrestrial microwave, television broadcast, and satellite transmission;

~~((13))~~ (15) "Telecommunication device" means (a) any type of instrument, device, machine, or equipment that is capable of transmitting or receiving telephonic or electronic communications; or (b) any part of such an instrument, device, machine, or equipment, or any computer circuit, computer chip, electronic mechanism, or other component, that is capable of facilitating the transmission or reception of telephonic or electronic communications;

~~((14))~~ (16) "Telecommunication service" includes any service other than subscription television service provided for a charge or compensation to facilitate the transmission, transfer, or reception of a telephonic communication or an electronic communication;



~~((+5))~~ (17) Value. (a) "Value" means the market value of the property or services at the time and in the approximate area of the criminal act.

(h) Whether or not they have been issued or delivered, written instruments, except those having a readily ascertained market value, shall be evaluated as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied;

(ii) The value of a ticket or equivalent instrument which evidences a right to receive transportation, entertainment, or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon, the value shall be deemed the price of such ticket or equivalent instrument which the issuer charged the general public;

(iii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(c) Whenever any series of transactions which constitute theft, would, when considered separately, constitute theft in the third degree because of value, and said series of transactions are a part of a common scheme or plan, then the transactions may be aggregated in one count and the sum of the value of all said transactions shall be the value considered in determining the degree of theft involved.

(d) Whenever any person is charged with possessing stolen property and such person has unlawfully in his possession at the same time the stolen property of more than one person, then the stolen property possessed may be aggregated in one count and the sum of the value of all said stolen property shall be the value considered in determining the degree of theft involved.

(e) Property or services having value that cannot be ascertained pursuant to the standards set forth above shall be deemed to be of a value not exceeding two hundred and fifty dollars;

~~((+6))~~ (18) "Shopping cart" means a basket mounted on wheels or similar container generally used in a retail establishment by a customer for the purpose of transporting goods of any kind;

~~((+7))~~ (19) "Parking area" means a parking lot or other property provided by retailers for use by a customer for parking an automobile or other vehicle.

Sec. 2. RCW 9A.56.170 and 1975 1st ex.s. c 260 s 9A.56.170 are each amended to read as follows:

"(1) A person is guilty of possessing stolen property in the third degree if he or she possesses (a) stolen property which does not exceed two hundred fifty dollars in value, or (b) ten or more stolen merchandise pallets, or ten or more stolen beverage crates, or a combination of ten or more stolen merchandise pallets and beverage crates.

(2) Possessing stolen property in the third degree is a gross misdemeanor.

Sec. 3. RCW 9A.56.140 and 1987 c 140 s 3 are each amended to read as follows:

(1) "Possessing stolen property" means knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.

(2) The fact that the person who stole the property has not been convicted, apprehended, or identified is not a defense to a charge of possessing stolen property.

(3) When a person (~~(not an issuer or agent thereof)~~) has in his or her possession, or under his or her control, stolen access devices issued in the names of two or more persons, or ten or more stolen merchandise pallets, or ten or more stolen beverage crates, or a combination of ten or more stolen merchandise pallets and beverage crates, as defined under RCW 9A.56.010, he (~~(shall be)~~) or she is presumed to know that they are stolen.

~~(This)~~ (4) The presumption ((may be rebutted)) in subsection (3) of this section is rebuttable by evidence raising a reasonable inference that the possession of such stolen access devices, merchandise pallets, or beverage crates was without knowledge that they were stolen.

Sec. 4. RCW 9A.56.050 and 1975 1st ex.s. c 260 s 9A.56.050 are each amended to read as follows:

"(1) A person is guilty of theft in the third degree if he or she commits theft of property or services which (a) does not exceed two hundred and fifty dollars in value, or (b) includes ten or more merchandise pallets, or ten or more beverage crates, or a combination of ten or more merchandise pallets and beverage crates.

(2) Theft in the third degree is a gross misdemeanor.

Passed the Senate March 7, 1998.

Passed the House March 4, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

## CHAPTER 237

[Substitute Senate Bill 6153]

### ACTIONS FOR INJURY OR DEATH OF A CHILD—LIMITING PARTIES TO ACTION

AN ACT Relating to actions for injury or death of a child; amending RCW 4.24.010; and creating a new section.

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

NEW SECTION. Sec. 1. It is the intent of this act to address the constitutional issue of equal protection addressed by the Washington state supreme court in *Guard v. Jackson*, 132 Wn.2d 660 (1997). The legislature intends to provide a civil cause of action for wrongful injury or death of a minor

child to a mother or father, or both, if the mother or father has had significant involvement in the child's life, including but not limited to, emotional, psychological, or financial support.

Sec. 2. RCW 4.24.010 and 1973 1st ex.s. c 154 s 4 are each amended to read as follows:

~~((The))~~ Δ mother or father, or both ~~((may maintain an action as plaintiff for the injury or death of a)), who has regularly contributed to the support of his or her~~ minor child, ~~((or))~~ and the mother or father, or both, of a child on whom either, or both, are dependent for support ~~((: PROVIDED, That in the case of an illegitimate child the father cannot))~~ may maintain or join as a party an action ~~((unless paternity has been duly established and the father has regularly contributed to the child's support))~~ as plaintiff for the injury or death of the child.

This section creates only one cause of action, but if the parents of the child are not married, are separated, or not married to each other damages may be awarded to each plaintiff separately, as the ~~((court))~~ trier of fact finds just and equitable.

If one parent brings an action under this section and the other parent is not named as a plaintiff, notice of the institution of the suit, together with a copy of the complaint, shall be served upon the other parent: PROVIDED, That ~~((when the mother of an illegitimate child initiates an action,))~~ notice shall be required only if ~~((paternity))~~ parentage has been duly established ~~((and the father has regularly contributed to the child's support)).~~

Such notice shall be in compliance with the statutory requirements for a summons. Such notice shall state that the other parent must join as a party to the suit within twenty days or the right to recover damages under this section shall be barred. Failure of the other parent to timely appear shall bar such parent's action to recover any part of an award made to the party instituting the suit.

In such an action, in addition to damages for medical, hospital, medication expenses, and loss of services and support, damages may be recovered for the loss of love and companionship of the child and for injury to or destruction of the parent-child relationship in such amount as, under all the circumstances of the case, may be just.

Passed the Senate February 11, 1998.

Passed the House March 4, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

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## CHAPTER 238

[Senate Bill 6155]

### SUPERVISION OF MUNICIPAL COURT PROBATION SERVICES BY COURT ADMINISTRATOR

AN ACT Relating to the supervision of municipal court probation services; and amending RCW 35.20.230.

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

**Sec. 1.** RCW 35.20.230 and 1969 ex.s. c 147 s 6 are each amended to read as follows:

The judges of the municipal court shall appoint a director of probation services who shall, under the direction and supervision of the ~~((presiding judge))~~ court administrator of the municipal court, supervise the probation officers of the municipal court. The judges of the municipal court shall also appoint a bailiff for the court, together with such number of probation officers and additional bailiffs as may be authorized by the legislative body of the city. ~~((Said))~~ The director of probation services, probation officers, and bailiff or bailiffs shall be paid by the city treasurer in such amount as is deemed reasonable by the legislative body of the city: **PROVIDED**, That such additional probation officers and bailiffs of the court as may be authorized by the county commissioners shall be paid from the county treasury.

Passed the Senate February 11, 1998.

Passed the House March 4, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

## CHAPTER 239

[Senate Bill 6220]

### AIRLINE EMPLOYEES—TRADING SHIFTS WITHOUT CREATING OVERTIME LIABILITY

AN ACT Relating to the ability of employees in the airline industry to trade shifts voluntarily without creating overtime liability; reenacting and amending RCW 49.46.130; and creating new sections.

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

**NEW SECTION.** **Sec. 1.** The legislature finds that employees in the airline industry have a long-standing practice and tradition of trading shifts voluntarily among themselves. The legislature also finds that federal law exempts airline employees from the provisions of federal overtime regulations. This act is intended to specify that airline industry employers are not required to pay overtime compensation to an employee agreeing to work additional hours for a coemployee.

**Sec. 2.** RCW 49.46.130 and 1997 c 311 s 1 and 1997 c 203 s 2 are each reenacted and amended to read as follows:

(1) Except as otherwise provided in this section, no employer shall employ any of his employees for a work week longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) This section does not apply to:

(a) Any person exempted pursuant to RCW 49.46.010(5). The payment of compensation or provision of compensatory time off in addition to a salary shall not be a factor in determining whether a person is exempted under RCW 49.46.010(5)(c);

(b) Employees who request compensating time off in lieu of overtime pay;

(c) Any individual employed as a seaman whether or not the seaman is employed on a vessel other than an American vessel;

(d) Seasonal employees who are employed at concessions and recreational establishments at agricultural fairs, including those seasonal employees employed by agricultural fairs, within the state provided that the period of employment for any seasonal employee at any or all agricultural fairs does not exceed fourteen working days a year;

(e) Any individual employed as a motion picture projectionist if that employee is covered by a contract or collective bargaining agreement which regulates hours of work and overtime pay;

(f) An individual employed as a truck or bus driver who is subject to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system under which the truck or bus driver is paid includes overtime pay, reasonably equivalent to that required by this subsection, for working longer than forty hours per week;

(g) Any individual employed (i) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or (ii) in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; or (iii) commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed in connection with the cultivation, raising, harvesting, and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(h) Any industry in which federal law provides for an overtime payment based on a work week other than forty hours. However, the provisions of the federal law regarding overtime payment based on a work week other than forty hours shall nevertheless apply to employees covered by this section without regard to the existence of actual federal jurisdiction over the industrial activity of the particular employer within this state. For the purposes of this subsection, "industry" means a trade, business, industry, or other activity, or branch, or group thereof, in which individuals are gainfully employed (section 3(h) of the Fair Labor Standards Act of 1938, as amended (Public Law 93-259));

(i) Any hours worked by an employee of a carrier by air subject to the provisions of subchapter II of the Railway Labor Act (45 U.S.C. Sec. 181 et seq.), when such hours are voluntarily worked by the employee pursuant to a shift-trading practice under which the employee has the opportunity in the same or in other work weeks to reduce hours worked by voluntarily offering a shift for trade or reassignment.

(3) No employer shall be deemed to have violated subsection (1) of this section by employing any employee of a retail or service establishment for a work week in excess of the applicable work week specified in subsection (1) of this section if:

(a) The regular rate of pay of the employee is in excess of one and one-half times the minimum hourly rate required under RCW 49.46.020; and

(h) More than half of the employee's compensation for a representative period, of not less than one month, represents commissions on goods or services.

In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate is to be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(4) No employer of commissioned salespeople primarily engaged in the business of selling automobiles, trucks, recreational vessels, recreational vessel trailers, recreational vehicle trailers, recreational campers, manufactured housing, or farm implements to ultimate purchasers shall violate subsection (1) of this section with respect to such commissioned salespeople if the commissioned salespeople are paid the greater of:

(a) Compensation at the hourly rate, which may not be less than the rate required under RCW 49.46.020, for each hour worked up to forty hours per week, and compensation of one and one-half times that hourly rate for all hours worked over forty hours in one week; or

(b) A straight commission, a salary plus commission, or a salary plus bonus applied to gross salary.

(5) No public agency shall be deemed to have violated subsection (1) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if: (a) In a work period of twenty-eight consecutive days the employee receives for tours of duty which in the aggregate exceed two hundred forty hours; or (b) in the case of such an employee to whom a work period of at least seven but less than twenty-eight days applies, in his or her work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his or her work period as two hundred forty hours bears to twenty-eight days; compensation at a rate not less than one and one-half times the regular rate at which he or she is employed.

NEW SECTION. Sec. 3. This act does not alter the terms, conditions, or practices contained in any collective bargaining agreement.

NEW SECTION. Sec. 4. This act is remedial in nature and applies retroactively.

NEW SECTION. Sec. 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate February 9, 1998.  
Passed the House March 6, 1998.  
Approved by the Governor March 30, 1998.  
Filed in Office of Secretary of State March 30, 1998.

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**CHAPTER 240**

[Senate Bill 6278]

**PORT DISTRICTS—NUMBER OF SIGNATURES ON PETITION FOR A NAME CHANGE**

AN ACT Relating to specifying the number of signatures required on a petition to place on the ballot the question of changing the name of a port district; and amending RCW 53.04.110.

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

**Sec. 1.** RCW 53.04.110 and 1990 c 259 s 18 are each amended to read as follows:

Any port district now existing or which may hereafter be organized under the laws of the state of Washington is hereby authorized to change its corporate name under the following conditions and in the following manner:

(1) On presentation, at least forty-five days before any general port election to be held in the port district, of a petition to the commissioners of any port district now existing or which may hereafter be established under the laws of the state of Washington, signed by (~~not less than two hundred fifty registered voters residing within the port district~~) at least ten percent of the total number of voters of the port district who voted at the last general port election and asking that the corporate name of the port district be changed, it shall be the duty of the commissioners to submit to the voters of the port district (~~at the next general port election held in the port district in accordance with RCW 29.13.010 and 29.13.020~~) the proposition as to whether the corporate name of the port shall be changed. The proposition shall be submitted at the next general port election.

(2) The petition shall contain the present corporate name of the port district and the corporate name which is proposed to be given to the port district.

(3) On submitting the proposition to the voters of the port district it shall be the duty of the port commissioners to cause to be printed on the official ballot used at the election the following proposition:

"Shall the corporate name, 'Port of . . . . . ' be changed to 'Port of . . . . . '  
..... YES  
"Shall the corporate name, 'Port of . . . . . ' be changed to 'Port of . . . . . '  
..... NO"

(4) At the time when the returns of the general election shall be canvassed by the commissioners of the port district, it shall be the duty of the commissioners to canvass the vote upon the proposition so submitted, recording in their record the result of the canvass.

(5) Should a majority of the registered voters of the port district voting at the general port election vote in favor of the proposition it shall be the duty of the port commissioners to certify the fact to the auditor of the county in which the port district shall be situated and to the secretary of state of the state of Washington, under the seal of the port district. On and after the filing of the certificate with the county auditor as aforesaid and with the secretary of state of the state of Washington, the corporate name of the port district shall be changed, and henceforth the port district shall be known and designated in accordance therewith.

Passed the Senate March 7, 1998.

Passed the House March 4, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

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## CHAPTER 241

[Substitute Senate Bill 6302]

### RISK-BASED CAPITAL STANDARDS FOR HEALTH CARE

AN ACT Relating to the risk-based capital of health carriers; amending RCW 48.42.040; and adding new sections to chapter 48.43 RCW.

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

**NEW SECTION.** Sec. 1. The definitions in this section apply throughout sections 1 through 15 of this act unless the context clearly requires otherwise.

(1) "Adjusted RBC report" means an RBC report that has been adjusted by the commissioner in accordance with section 2(4) of this act.

(2) "Corrective order" means an order issued by the commissioner specifying corrective actions that the commissioner has determined are required.

(3) "Domestic carrier" means any carrier domiciled in this state, or any person or entity subject to chapter 48.42 RCW domiciled in this state.

(4) "Foreign or alien carrier" means any carrier that is licensed to do business in this state but is not domiciled in this state, or any person or entity subject to chapter 48.42 RCW not domiciled in this state.

(5) "NAIC" means the national association of insurance commissioners.

(6) "Negative trend" means, with respect to a carrier, a negative trend over a period of time, as determined in accordance with the "trend test calculation" included in the RBC instructions.

(7) "RBC" means risk-based capital.

(8) "RBC instructions" means the RBC report including risk-based capital instructions adopted by the NAIC, as such RBC instructions may be amended by



the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(9) "RBC level" means a carrier's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(a) "Company action level RBC" means, with respect to any carrier, the product of 2.0 and its authorized control level RBC;

(b) "Regulatory action level RBC" means the product of 1.5 and its authorized control level RBC;

(c) "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions;

(d) "Mandatory control level RBC" means the product of .70 and the authorized control level RBC.

(10) "RBC plan" means a comprehensive financial plan containing the elements specified in section 3(2) of this act. If the commissioner rejects the RBC plan, and it is revised by the carrier, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan."

(11) "RBC report" means the report required in section 2 of this act.

(12) "Total adjusted capital" means the sum of:

(a) Either a carrier's statutory capital and surplus or net worth, or both, as determined in accordance with statutory accounting applicable to the annual financial statements required to be filed with the commissioner; and

(b) Other items, if any, as the RBC instructions may provide.

**NEW SECTION. Sec. 2.** (1) Every domestic carrier shall, on or prior to the filing date of March 1st, prepare and submit to the commissioner a report of its RBC levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC instructions. In addition, every domestic carrier shall file its RBC report:

(a) With the NAIC in accordance with the RBC instructions; and

(b) With the insurance commissioner in any state in which the carrier is authorized to do business, if the insurance commissioner has notified the carrier of its request in writing, in which case the carrier shall file its RBC report not later than the later of:

(i) Fifteen days from the receipt of notice to file its RBC report with that state; or

(ii) The filing date.

(2) A carrier's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account (and may adjust for the covariance between):

(a) The risk with respect to the carrier's assets;

(b) The risk of adverse insurance experience with respect to the carrier's liabilities and obligations;

(c) The interest rate risk with respect to the carrier's business; and

(d) All other business risks and such other relevant risks as are set forth in the RBC instructions; determined in each case by applying the factors in the manner set forth in the RBC instructions.

(3) An excess of capital over the amount produced by the risk-based capital requirements contained in sections 1 through 15 of this act and the formulas, schedules, and instructions referenced in sections 1 through 15 of this act is desirable in the business of insurance. Accordingly, carriers should seek to maintain capital above the RBC levels required by sections 1 through 15 of this act. Additional capital is used and useful in the insurance business and helps to secure a carrier against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in sections 1 through 15 of this act.

(4) If a domestic carrier files an RBC report that in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the carrier of the adjustment. The notice shall contain a statement of the reason for the adjustment.

**NEW SECTION. Sec. 3.** (1) "Company action level event" means any of the following events:

(a) The filing of an RBC report by a carrier which indicates that:

(i) The carrier's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC; or

(ii) The carrier has total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 2.5 and has a negative trend;

(b) The notification by the commissioner to the carrier of an adjusted RBC report that indicates an event in (a) of this subsection, provided the carrier does not challenge the adjusted RBC report under section 7 of this act; or

(c) If, under section 7 of this act, a carrier challenges an adjusted RBC report that indicates the event in (a) of this subsection, the notification by the commissioner to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge.

(2) In the event of a company action level event, the carrier shall prepare and submit to the commissioner an RBC plan that:

(a) Identifies the conditions that contribute to the company action level event;

(b) Contains proposals of corrective actions that the carrier intends to take and would be expected to result in the elimination of the company action level event;

(c) Provides projections of the carrier's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, surplus, capital and surplus, and net worth. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(d) Identifies the key assumptions impacting the carrier's projections and the sensitivity of the projections to the assumptions; and

(e) Identifies the quality of, and problems associated with, the carrier's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

(3) The RBC plan shall be submitted:

(a) Within forty-five days of the company action level event; or

(b) If the carrier challenges an adjusted RBC report under section 7 of this act, within forty-five days after notification to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge.

(4) Within sixty days after the submission by a carrier of an RBC plan to the commissioner, the commissioner shall notify the carrier whether the RBC plan may be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC plan is unsatisfactory, the notification to the carrier shall set forth the reasons for the determination, and may set forth proposed revisions that will render the RBC plan satisfactory. Upon notification from the commissioner, the carrier shall prepare a revised RBC plan, that may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) Within forty-five days after the notification from the commissioner; or

(b) If the carrier challenges the notification from the commissioner under section 7 of this act, within forty-five days after a notification to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge.

(5) In the event of a notification by the commissioner to a carrier that the carrier's RBC plan or revised RBC plan is unsatisfactory, the commissioner may, subject to the carrier's rights to a hearing under section 7 of this act, specify in the notification that the notification constitutes a regulatory action level event.

(6) Every domestic carrier that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the carrier is authorized to do business if:

(a) Such state has an RBC provision substantially similar to section 8(1) of this act; and

(b) The insurance commissioner of that state has notified the carrier of its request for the filing in writing, in which case the carrier shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

(i) Fifteen days after the receipt of notice to file a copy of its RBC plan or revised plan with the state; or

(ii) The date on which the RBC plan or revised RBC plan is filed under subsections (3) and (4) of this section.

**NEW SECTION. Sec. 4.** (1) "Regulatory action level event" means, with respect to any carrier, any of the following events:

(a) The filing of an RBC report by the carrier which indicates that the carrier's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(b) The notification by the commissioner to a carrier of an adjusted RBC report that indicates the event in (a) of this subsection, provided the carrier does not challenge the adjusted RBC report under section 7 of this act;

(c) If, under section 7 of this act, the carrier challenges an adjusted RBC report that indicates the event in (a) of this subsection, the notification by the commissioner to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge;

(d) The failure of the carrier to file an RBC report by the filing date, unless the carrier has provided an explanation for such failure that is satisfactory to the commissioner and has cured the failure within ten days after the filing date;

(e) The failure of the carrier to submit an RBC plan to the commissioner within the time period set forth in section 3(3) of this act;

(f) Notification by the commissioner to the carrier that:

(i) The RBC plan or revised RBC plan submitted by the carrier is, in the judgment of the commissioner, unsatisfactory; and

(ii) The notification constitutes a regulatory action level event with respect to the carrier, provided the carrier has not challenged the determination under section 7 of this act;

(g) If, under section 7 of this act, the carrier challenges a determination by the commissioner under (f) of this subsection, the notification by the commissioner to the carrier that the commissioner has, after a hearing, rejected the challenge;

(h) Notification by the commissioner to the carrier that the carrier has failed to adhere to its RBC plan or revised RBC plan, but only if such failure has a substantial adverse effect on the ability of the carrier to eliminate the company action level event in accordance with its RBC plan or revised RBC plan and the commissioner has so stated in the notification, provided the carrier has not challenged the determination under section 7 of this act; or

(i) If, under section 7 of this act, the carrier challenges a determination by the commissioner under (h) of this subsection, the notification by the commissioner to the carrier that the commissioner has, after a hearing, rejected the challenge.

(2) In the event of a regulatory action level event the commissioner shall:

(a) Require the carrier to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(b) Perform the examination or analysis the commissioner deems necessary of the assets, liabilities, and operations of the carrier including a review of its RBC plan or revised RBC plan; and

(c) Subsequent to the examination or analysis, issue an order specifying those corrective actions the commissioner determines are required.

(3) In determining corrective actions, the commissioner may take into account those factors deemed relevant with respect to the carrier based upon the

commissioner's examination or analysis of the assets, liabilities, and operations of the carrier, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC instructions. The RBC plan or revised RBC plan shall be submitted:

(a) Within forty-five days after the occurrence of the regulatory action level event;

(b) If the carrier challenges an adjusted RBC report under section 7 of this act and the challenge is not frivolous in the judgment of the commissioner within forty-five days after the notification to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge; or

(c) If the carrier challenges a revised RBC plan under section 7 of this act and the challenge is not frivolous in the judgment of the commissioner, within forty-five days after the notification to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge.

(4) The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to review the carrier's RBC plan or revised RBC plan, examine or analyze the assets, liabilities, and operations of the carrier and formulate the corrective order with respect to the carrier. The fees, costs, and expenses relating to consultants shall be borne by the affected carrier or other party as directed by the commissioner.

**NEW SECTION. Sec. 5.** (1) "Authorized control level event" means any of the following events:

(a) The filing of an RBC report by the carrier which indicates that the carrier's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(b) The notification by the commissioner to the carrier of an adjusted RBC report that indicates the event in (a) of this subsection, provided the carrier does not challenge the adjusted RBC report under section 7 of this act;

(c) If, under section 7 of this act, the carrier challenges an adjusted RBC report that indicates the event in (a) of this subsection, notification by the commissioner to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge;

(d) The failure of the carrier to respond, in a manner satisfactory to the commissioner, to a corrective order, provided the carrier has not challenged the corrective order under section 7 of this act; or

(e) If the carrier has challenged a corrective order under section 7 of this act and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the carrier to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

(2) In the event of an authorized control level event with respect to a carrier, the commissioner shall:

(a) Take those actions required under section 4 of this act regarding a carrier with respect to which a regulatory action level event has occurred; or

(b) If the commissioner deems it to be in the best interests of either the policyholders or subscribers, or both, and creditors of the carrier and of the public, take those actions necessary to cause the carrier to be placed under regulatory control under chapter 48.31 RCW. In the event the commissioner takes such actions, the authorized control level event is sufficient grounds for the commissioner to take action under chapter 48.31 RCW, and the commissioner shall have the rights, powers, and duties with respect to the carrier as are set forth in chapter 48.31 RCW. In the event the commissioner takes actions under this subsection (2)(b) pursuant to an adjusted RBC report, the carrier is entitled to those protections afforded to carriers under the provisions of RCW 48.31.121 pertaining to summary proceedings.

**NEW SECTION. Sec. 6.** (1) "Mandatory control level event" means any of the following events:

(a) The filing of an RBC report which indicates that the carrier's total adjusted capital is less than its mandatory control level RBC;

(b) Notification by the commissioner to the carrier of an adjusted RBC report that indicates the event in (a) of this subsection, provided the carrier does not challenge the adjusted RBC report under section 7 of this act; or

(c) If, under section 7 of this act, the carrier challenges an adjusted RBC report that indicates the event in (a) of this subsection, notification by the commissioner to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge.

(2) In the event of a mandatory control level event, with respect to a carrier, the commissioner shall take those actions necessary to place the carrier under regulatory control under chapter 48.31 RCW. In that event, the mandatory control level event is sufficient grounds for the commissioner to take action under chapter 48.31 RCW, and the commissioner shall have the rights, powers, and duties with respect to the carrier as are set forth in chapter 48.31 RCW. If the commissioner takes actions pursuant to an adjusted RBC report, the carrier is entitled to the protections of RCW 48.31.121 pertaining to summary proceedings. However, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.

**NEW SECTION. Sec. 7.** (1) Upon notification to a carrier by the commissioner of any of the following, the carrier shall have the right to a hearing, in accordance with chapters 48.04 and 34.05 RCW, at which the carrier may challenge any determination or action by the commissioner:

(a) Of an adjusted RBC report; or

(b)(i) That the carrier's RBC plan or revised RBC plan is unsatisfactory; and

(ii) The notification constitutes a regulatory action level event with respect to such carrier; or

(c) That the carrier has failed to adhere to its RBC plan or revised RBC plan and that such failure has a substantial adverse effect on the ability of the carrier to eliminate the company action level event with respect to the carrier in accordance with its RBC plan or revised RBC plan; or

(d) Of a corrective order with respect to the carrier.

(2) The carrier shall notify the commissioner of its request for a hearing within five days after the notification by the commissioner under this section. Upon receipt of the carrier's request for a hearing, the commissioner shall set a date for the hearing. The date shall be no less than ten nor more than thirty days after the date of the carrier's request.

**NEW SECTION.** Sec. 8. (1) All RBC reports, to the extent the information therein is not required to be set forth in a publicly available annual statement schedule, and RBC plans, including the results or report of any examination or analysis of a carrier and any corrective order issued by the commissioner, with respect to any domestic carrier or foreign carrier that are filed with the commissioner constitute information that might be damaging to the carrier if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information shall not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner.

(2) The comparison of a carrier's total adjusted capital to any of its RBC levels is a regulatory tool that may indicate the need for possible corrective action with respect to the carrier, and is not a means to rank carriers generally. Therefore, except as otherwise required under the provisions of sections 1 through 15 of this act, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the RBC levels of any carrier, or of any component derived in the calculation, by any carrier, agent, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited. However, if any materially false statement with respect to the comparison regarding a carrier's total adjusted capital to its RBC levels (or any of them) or an inappropriate comparison of any other amount to the carrier's RBC levels is published in any written publication and the carrier is able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the carrier may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(3) The RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans are intended solely for use by the commissioner in monitoring the solvency of carriers and the need for possible corrective action

with respect to carriers and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that a carrier or any affiliate is authorized to write.

**NEW SECTION. Sec. 9.** (1) The provisions of sections 1 through 15 of this act are supplemental to any other provisions of the laws and rules of this state, and shall not preclude or limit any other powers or duties of the commissioner under such laws and rules, including, but not limited to, chapter 48.31 RCW.

(2) The commissioner may adopt reasonable rules necessary for the implementation of sections 1 through 15 of this act.

**NEW SECTION. Sec. 10.** (1) Any foreign or alien carrier shall, upon the written request of the commissioner, submit to the commissioner an RBC report as of the end of the calendar year just ended by the later of:

(a) The date an RBC report would be required to be filed by a domestic carrier under sections 1 through 15 of this act; or

(b) Fifteen days after the request is received by the foreign or alien carrier. Any foreign or alien carrier shall, at the written request of the commissioner, promptly submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

(2) In the event of a company action level event, regulatory action level event, or authorized control level event with respect to any foreign or alien carrier as determined under the RBC statute applicable in the state of domicile of the carrier or, if no RBC statute is in force in that state, under the provisions of sections 1 through 15 of this act, if the insurance commissioner of the state of domicile of the foreign or alien carrier fails to require the foreign or alien carrier to file an RBC plan in the manner specified under that state's RBC statute or, if no RBC statute is in force in that state, under section 3 of this act, the commissioner may require the foreign or alien carrier to file an RBC plan with the commissioner. In this event, the failure of the foreign or alien carrier to file an RBC plan with the commissioner is grounds to order the carrier to cease and desist from writing new insurance business in this state.

(3) In the event of a mandatory control level event with respect to any foreign or alien carrier, if no domiciliary receiver has been appointed with respect to the foreign or alien carrier under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign or alien carrier, the commissioner may apply for an order under RCW 48.31.080 or 48.31.090 to conserve the assets within this state of foreign or alien carriers, and the occurrence of the mandatory control level event is considered adequate grounds for the application.

**NEW SECTION. Sec. 11.** There is no liability on the part of, and no cause of action shall arise against, the commissioner or insurance department or its employees or agents for any action taken by them in the performance of their powers and duties under sections 1 through 15 of this act.



**NEW SECTION.** Sec. 12. All notices by the commissioner to a carrier that may result in regulatory action are effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmission, are effective upon the carrier's receipt of such notice.

**NEW SECTION.** Sec. 13. For RBC reports to be filed by carriers commencing operations after the effective date of this act, those carriers shall calculate the initial RBC levels using financial projections, considering managed care arrangements, for its first full year in operation. Such projections, including the risk-based capital requirement, must be included as part of a comprehensive business plan that is submitted as part of the application for registration under RCW 48.44.040 and 48.46.030. The resulting RBC requirement shall be reported in the first RBC report submitted under section 2 of this act. For subsequent reports, the RBC results using actual financial data shall be included.

**NEW SECTION.** Sec. 14. The first RBC report required under section 2 of this act shall be filed on or prior to March 1, 1999, for the 1998 calendar year.

**NEW SECTION.** Sec. 15. Sections 1 through 15 of this act shall not apply to a carrier which is subject to the provisions of RCW 48.05.430 through 48.05.490.

**Sec. 16.** RCW 48.42.040 and 1983 c 36 s 4 are each amended to read as follows:

Any person or entity unable to show that it is subject to the jurisdiction and regulation of another agency of this state, any subdivision thereof, or the federal government, shall be subject to all appropriate provisions of this title regarding the conduct of its business including, but not limited to, sections 1 through 15 of this act.

**NEW SECTION.** Sec. 17. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION.** Sec. 18. Sections 1 through 15 of this act are each added to chapter 48.43 RCW.

Passed the Senate March 7, 1998.

Passed the House February 27, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

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## CHAPTER 242

[Substitute Senate Bill 6518]

### INCREASING DEGREE OF RAPE WHEN VICTIM IS INCAPACITATED

AN ACT Relating to rape in the first degree; reenacting and amending RCW 9A.44.040; and prescribing penalties.

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

**Sec. 1.** RCW 9A.44.040 and 1983 c 118 s 1 and 1983 c 73 s 1 are each reenacted and amended to read as follows:

(1) A person is guilty of rape in the first degree when such person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory:

(a) Uses or threatens to use a deadly weapon or what appears to be a deadly weapon; or

(b) Kidnaps the victim; or

(c) Inflicts serious physical injury, including but not limited to physical injury which renders the victim unconscious; or

(d) Feloniously enters into the building or vehicle where the victim is situated.

(2) Rape in the first degree is a class A felony.

Passed the Senate March 12, 1998.

Passed the House March 4, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

## CHAPTER 243

[Substitute Senate Bill 6550]

### CHEMICAL DEPENDENCY PROFESSIONALS

AN ACT Relating to chemical dependency counselor regulation; reenacting and amending RCW 18.130.040; adding a new chapter to Title 18 RCW; and providing effective dates.

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

**NEW SECTION.** **Sec. 1.** The legislature recognizes chemical dependency professionals as discrete health professionals. Chemical dependency professional certification serves the public interest.

**NEW SECTION.** **Sec. 2.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Certification" means a voluntary process recognizing an individual who qualifies by examination and meets established educational prerequisites, and which protects the title of practice.

(2) "Certified chemical dependency professional" means an individual certified in chemical dependency counseling, under this chapter.

(3) "Chemical dependency counseling" means employing the core competencies of chemical dependency counseling to assist or attempt to assist an alcohol or drug addicted person to develop and maintain abstinence from alcohol and other mood-altering drugs.

(4) "Committee" means the chemical dependency certification advisory committee established under this chapter.

(5) "Core competencies of chemical dependency counseling" means competency in the nationally recognized knowledge, skills, and attitudes of

professional practice, including assessment and diagnosis of chemical dependency, chemical dependency treatment planning and referral, patient and family education in the disease of chemical dependency, individual and group counseling with alcoholic and drug addicted individuals, relapse prevention counseling, and case management, all oriented to assist alcoholic and drug addicted patients to achieve and maintain abstinence from mood-altering substances and develop independent support systems.

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

(7) "Health profession" means a profession providing health services regulated under the laws of this state.

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

**NEW SECTION.** Sec. 3. No person may represent oneself as a certified chemical dependency professional or use any title or description of services of certified chemical dependency professional without applying for certification, meeting the required qualifications, and being certified by the department of health, unless otherwise exempted by this chapter.

**NEW SECTION.** Sec. 4. Nothing in this chapter shall be construed to authorize the use of the title "certified chemical dependency professional" when treating patients in settings other than programs approved under chapter 70.96A RCW.

**NEW SECTION.** Sec. 5. Nothing in this chapter shall be construed to prohibit or restrict:

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

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

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

**NEW SECTION.** Sec. 6. In addition to any other authority provided by law, the secretary has the authority to:

(1) Adopt rules under chapter 34.05 RCW necessary to implement this chapter, in consultation with the committee;

(2) Establish all certification, examination, and renewal fees in accordance with RCW 43.70.250;

(3) Establish forms and procedures necessary to administer this chapter;

(4) Issue certificates to applicants who have met the education, training, and examination requirements for certification and to deny certification to applicants who do not meet the minimum qualifications, except that proceedings concerning the denial of certification based upon unprofessional conduct or impairment shall be governed by the uniform disciplinary act, chapter 18.130 RCW;

(5) Hire clerical, administrative, investigative, and other staff as needed to implement this chapter, and hire individuals certified under this chapter to serve as examiners for any practical examinations;

(6) Determine minimum education requirements and evaluate and designate those educational programs that will be accepted as proof of eligibility to take a qualifying examination for applicants for certification;

(7) Prepare, grade, and administer, or determine the nature of, and supervise the grading and administration of, examinations for applicants for certification;

(8) Determine whether alternative methods of training are equivalent to formal education, and establish forms, procedures, and criteria for evaluation of an applicant's alternative training to determine the applicant's eligibility to take any qualifying examination;

(9) Determine which states have credentialing requirements equivalent to those of this state, and issue certificates to individuals credentialed in those states without examinations;

(10) Define and approve any experience requirement for certification;

(11) Implement and administer a program for consumer education;

(12) Adopt rules implementing a continuing competency program;

(13) Maintain the official department record of all applicants and certificated individuals;

(14) Establish by rule the procedures for an appeal of an examination failure; and

(15) Establish disclosure requirements.

**NEW SECTION. Sec. 7.** The secretary shall keep an official record of all proceedings. A part of the record shall consist of a register of all applicants for certification under this chapter and the results of each application.

**NEW SECTION. Sec. 8.** The secretary shall appoint a chemical dependency certification advisory committee to further the purposes of this chapter. The committee shall be composed of seven members, one member initially appointed for a term of one year, three for a term of two years, and three for a term of three years. Subsequent appointments shall be for terms of three years. No person may serve as a member of the committee for more than two consecutive terms. Members of the committee shall be residents of this state. The committee shall be composed of four certified chemical dependency professionals; one chemical dependency treatment program director; one physician licensed under chapter 18.71 or 18.57 RCW who is certified in addiction medicine or a licensed or certified mental health practitioner; and one member of the public who has received chemical dependency counseling.

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

(3) The committee shall meet at the times and places designated by the secretary and shall hold meetings during the year as necessary to provide advice

to the director. The committee may elect a chair and a vice-chair. A majority of the members currently serving shall constitute a quorum.

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

(5) The director of the department of social and health services division of alcohol and substance abuse or the director's designee, shall serve as an ex officio member of the committee.

(6) The secretary, members of the committee, or individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any certification or disciplinary proceedings or other official acts performed in the course of their duties.

**NEW SECTION. Sec. 9.** (1) The secretary shall issue a certificate to any applicant who demonstrates to the secretary's satisfaction that the following requirements have been met:

(a) Completion of an educational program approved by the secretary or successful completion of alternate training that meets established criteria;

(b) Successful completion of an approved examination, based on core competencies of chemical dependency counseling; and

(c) Successful completion of an experience requirement that establishes fewer hours of experience for applicants with higher levels of relevant education. In meeting any experience requirement established under this subsection, the secretary may not require more than one thousand five hundred hours of experience in chemical dependency counseling for applicants who are licensed under chapter 18.83 RCW or under chapter 18.79 RCW as advanced registered nurse practitioners.

(2) The secretary shall establish by rule what constitutes adequate proof of meeting the criteria.

(3) Applicants are subject to the grounds for denial of a certificate or issuance of a conditional certificate under chapter 18.130 RCW.

(4) Certified chemical dependency professionals shall not be required to be registered under chapter 18.19 RCW.

**NEW SECTION. Sec. 10.** The secretary may establish by rule the standards and procedures for approval of educational programs and alternative training. The secretary may utilize or contract with individuals or organizations having expertise in the profession or in education to assist in the evaluations. The secretary shall establish by rule the standards and procedures for revocation of approval of education programs. The standards and procedures set shall apply equally to educational programs and training in the United States and in foreign jurisdictions. The secretary may establish a fee for educational program evaluations.

**NEW SECTION. Sec. 11.** (1) The date and location of examinations shall be established by the secretary. Applicants who have been found by the secretary to meet the other requirements for certification shall be scheduled for the next examination following the filing of the application. The secretary shall establish by rule the examination application deadline.

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

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

(4) Any applicant failing to make the required grade in the first examination may take up to three subsequent examinations as the applicant desires upon prepaying a fee determined by the secretary under RCW 43.70.250 for each subsequent examination. Upon failing four examinations, the secretary may invalidate the original application and require such remedial education before the person may take future examinations.

(5) The secretary may approve an examination prepared or administered by a private testing agency or association of licensing agencies for use by an applicant in meeting the certification requirements.

**NEW SECTION. Sec. 12.** Applications for certification shall be submitted on forms provided by the secretary. The secretary may require any information and documentation that reasonably relates to the need to determine whether the applicant meets the criteria for certification provided for in this chapter and chapter 18.130 RCW. Each applicant shall pay a fee determined by the secretary under RCW 43.70.250. The fee shall accompany the application.

**NEW SECTION. Sec. 13.** (1) Within two years after the effective date of this section, the secretary shall waive the examination and certify a person who pays a fee and produces a valid chemical dependency counselor certificate of qualification from the department of social and health services.

(2) Within two years after the effective date of this section, the secretary shall waive the examination and certify applicants who are licensed under chapter 18.83 RCW or under chapter 18.79 RCW as advanced registered nurse practitioners who pay a fee, who document completion of courses substantially equivalent to those required of chemical dependency counselors working in programs approved under chapter 70.96A RCW on the effective date of this section, and who provide evidence of one thousand five hundred hours of experience in chemical dependency counseling.

(3) It is the intent of the legislature that the credentialing of chemical dependency professionals be established solely by the department.

**NEW SECTION. Sec. 14.** An applicant holding a credential in another state may be certified to practice in this state without examination if the secretary determines that the other state's credentialing standards are substantially equivalent to the standards in this state.

**NEW SECTION. Sec. 15.** The uniform disciplinary act, chapter 18.130 RCW, shall govern the issuance and denial of certificates, unauthorized practice, and the discipline of persons certified under this chapter. The secretary shall be the disciplining authority under this chapter.

**Sec. 16.** RCW 18.130.040 and 1997 c 392 s 516, 1997 c 334 s 14, 1997 c 285 s 13, and 1997 c 275 s 2 are each reenacted and amended to read as follows:

(1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

- (i) Dispensing opticians licensed under chapter 18.34 RCW;
- (ii) Naturopaths licensed under chapter 18.36A RCW;
- (iii) Midwives licensed under chapter 18.50 RCW;
- (iv) Ocularists licensed under chapter 18.55 RCW;
- (v) Massage operators and businesses licensed under chapter 18.108 RCW;
- (vi) Dental hygienists licensed under chapter 18.29 RCW;
- (vii) Acupuncturists licensed under chapter 18.06 RCW;
- (viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;
- (ix) Respiratory care practitioners licensed under chapter 18.89 RCW;
- (x) Persons registered or certified under chapter 18.19 RCW;
- (xi) Persons registered as nursing pool operators under chapter 18.52C RCW;
- (xii) Nursing assistants registered or certified under chapter 18.88A RCW;
- (xiii) Health care assistants certified under chapter 18.135 RCW;
- (xiv) Dietitians and nutritionists certified under chapter 18.138 RCW;
- (xv) Chemical dependency professionals certified under chapter 18.— RCW (sections 1 through 15 of this act);
- (xvi) Sex offender treatment providers certified under chapter 18.155 RCW;
- ~~((xvi))~~ (xvii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;
- ~~((xvii))~~ (xviii) Persons registered as adult family home providers and resident managers under RCW 18.48.020;
- ~~((xviii))~~ (xix) Denturists licensed under chapter 18.30 RCW; and
- ~~((xix))~~ (xx) Orthotists and prosthetists licensed under chapter 18.200 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

- (i) The podiatric medical board as established in chapter 18.22 RCW;

- (ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;
  - (iii) The dental quality assurance commission as established in chapter 18.32 RCW;
  - (iv) The board of hearing and speech as established in chapter 18.35 RCW;
  - (v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;
  - (vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;
  - (vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;
  - (viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;
  - (ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;
  - (x) The board of physical therapy as established in chapter 18.74 RCW;
  - (xi) The board of occupational therapy practice as established in chapter 18.59 RCW;
  - (xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses issued under that chapter;
  - (xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and
  - (xiv) The veterinary board of governors as established in chapter 18.92 RCW.
- (3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160 by the disciplining authority.
- (4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section.

**NEW SECTION.** Sec. 17. Sections 1 through 15 of this act constitute a new chapter in Title 18 RCW.

**NEW SECTION.** Sec. 18. This act takes effect July 1, 1998, except for sections 3, 9, 13, and 14 of this act, which take effect July 1, 1999.

Passed the Senate March 9, 1998.

Passed the House March 4, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.



**CHAPTER 244**

[Engrossed Substitute Senate Bill 6600]

**EDUCATION OF JUVENILES INCARCERATED IN ADULT CORRECTIONAL FACILITIES**

AN ACT Relating to education of juveniles incarcerated in adult correctional facilities; amending RCW 72.09.460, 41.59.080, 28A.310.300, and 28A.225.010; adding a new section to chapter 41.56 RCW; adding a new section to chapter 28B.150 RCW; adding a new chapter to Title 28A RCW; providing an effective date; and declaring an emergency.

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

**NEW SECTION.** Sec. 1. The legislature intends to provide for the operation of education programs for the department of corrections' juvenile inmates. School districts, educational service districts, or any combination thereof should be the primary providers of the education programs. However, the legislature does not intend to preclude community and technical colleges, four-year institutions of higher education, or other qualified entities from contracting to provide all or part of these education programs if no school district or educational service district is willing to operate all or part of the education programs.

The legislature finds that this chapter fully satisfies any constitutional duty to provide education programs for juvenile inmates in adult correctional facilities. The legislature further finds that biennial appropriations for education programs under this chapter amply provide for any constitutional duty to educate juvenile inmates in adult correctional facilities.

**NEW SECTION.** Sec. 2. Any school district or educational service district may operate all or any portion of an education program for juveniles in accordance with this chapter, notwithstanding the fact the services or benefits provided extend beyond the geographic boundaries of the school district or educational service district providing the service.

**NEW SECTION.** Sec. 3. The superintendent of public instruction shall solicit an education provider for the department of corrections' juvenile inmates within sixty days as follows:

(1) The superintendent of public instruction shall notify and solicit proposals from all interested and capable school districts, educational service districts, institutions of higher education, private contractors, or any combination thereof. The notice shall describe the proposed education program's requirements and the appropriated amount. The selection of an education provider shall be in the following order:

(a) The school district where there is an educational site for juveniles in an adult correctional facility maintained by the state department of corrections has first priority to operate an education program for inmates at that site. The district may elect to operate an education program by itself or with another school district, educational service district, institution of higher education, private contractor, or any combination thereof. If the school district elects not to exercise its priority, it shall notify the superintendent of public instruction within thirty calendar days of the day of solicitation.

(b) The educational service district where there is an educational site for juveniles in an adult correctional facility maintained by the state department of corrections has second priority to operate an education program for inmates at that site. The educational service district may elect to do so by itself or with a school district, another educational service district, institution of higher education, private contractor, or any combination thereof. If the educational service district elects not to exercise its priority, it shall notify the superintendent of public instruction within forty-five calendar days of the day of solicitation.

(c) If neither the school district nor the educational service district chooses to operate an education program for inmates as provided for in (a) and (b) of this subsection, the superintendent of public instruction may contract with an entity, including, but not limited to, school districts, educational service districts, institutions of higher education, private contractors, or any combination thereof, within sixty calendar days of the day of solicitation. The selected entity may operate an education program by itself or with another school district, educational service district, institution of higher education, or private contractor, or any combination thereof.

(2) If the superintendent of public instruction does not contract with an interested entity within sixty days of the day of solicitation, the educational service district where there is an educational site for juveniles in an adult correctional facility maintained by the state department of corrections shall begin operating the education program for inmates at the site within ninety days from the day of solicitation in subsection (1) of this section.

**NEW SECTION.** Sec. 4. Except as otherwise provided for by contract under section 7 of this act, the duties and authority of a school district, educational service district, institution of higher education, or private contractor to provide for education programs under this chapter are limited to the following:

(1) Employing, supervising, and controlling administrators, teachers, specialized personnel, and other persons necessary to conduct education programs, subject to security clearance by the department of corrections;

(2) Purchasing, leasing, or renting and providing textbooks, maps, audiovisual equipment, paper, writing instruments, physical education equipment, and other instructional equipment, materials, and supplies deemed necessary by the provider of the education programs;

(3) Conducting education programs for inmates under the age of eighteen in accordance with program standards established by the superintendent of public instruction. The education provider shall develop the curricula, instructional methods, and educational objectives of the education programs, subject to applicable requirements of state and federal law. The department of corrections shall establish behavior standards that govern inmate participation in education programs, subject to applicable requirements of state and federal law;

(4) Students age eighteen who have participated in an education program governed by this chapter may continue in the program with the permission of the

department of corrections and the education provider, under the rules adopted by the superintendent of public instruction.

**NEW SECTION. Sec. 5.** School districts and educational service districts providing an education program to juvenile inmates in an adult corrections facility, notwithstanding that their geographical boundaries do not include the facility, may:

(1) Award appropriate diplomas or certificates to inmates who successfully complete graduation requirements;

(2) Spend only funds appropriated by the legislature and allocated by the superintendent of public instruction for the exclusive purpose of maintaining and operating education programs under this chapter, including direct and indirect costs of maintaining and operating the education programs, and funds from federal and private grants, bequests, and gifts made for that purpose. School districts may not expend excess tax levy proceeds authorized for school district purposes to pay costs incurred under this chapter.

**NEW SECTION. Sec. 6.** To support each education program under this chapter, the department of corrections and each superintendent or chief administrator of a correction facility shall:

(1) Through construction, lease, or rental of space, provide necessary building and exercise spaces for the education program that is secure, separate, and apart from space occupied by nonstudent inmates;

(2) Through construction, lease, or rental, provide vocational instruction machines; technology and supporting equipment; tools, building, and exercise facilities; and other equipment and fixtures deemed necessary by the department of corrections to conduct the education program;

(3) Provide heat, lights, telephone, janitorial services, repair services, and other support services for the building and exercise spaces, equipment, and fixtures provided under this section;

(4) Employ, supervise, and control security staff to safeguard agents of the education providers and inmates while engaged in educational and related activities conducted under this chapter;

(5) Provide clinical and medical evaluation services necessary for a determination by the education provider of the educational needs of inmates; and

(6) Provide such other support services and facilities as are reasonably necessary to conduct the education program.

**NEW SECTION. Sec. 7.** Each education provider under this chapter and the department of corrections shall negotiate and execute a written contract for each school year or such longer period as may be agreed to that delineates the manner in which their respective duties and authority will be cooperatively performed and exercised, and any disputes and grievances resolved through mediation, and if necessary, arbitration. Any such contract may provide for the performance of duties by an education provider in addition to those set forth in this chapter, including duties imposed upon the department of corrections and its agents under

section 6 of this act if supplemental funding provided by the department of corrections is available to fully pay the direct and indirect costs of these additional duties.

**NEW SECTION. Sec. 8.** By April 15th of each school year, the department of corrections shall provide written notice to the superintendent of public instruction and education providers operating programs under this chapter of any reasonably foreseeable education site closures, reductions in the number of inmates or education services, or any other cause for a reduction in certificated or classified staff the next school year. In the event the department of corrections fails to provide notice as required by this section, the department is liable and responsible for the payment of the salary and employment-related costs for the next school year of each employee whose contract would or could have been nonrenewed but for the failure of the department to provide notice. Disputes arising under this section shall be resolved in accordance with the alternative dispute resolution method or methods specified in the contract required by section 7 of this act.

**NEW SECTION. Sec. 9.** The superintendent of public instruction shall:

(1) Allocate money appropriated by the legislature to administer and provide education programs under this chapter to school districts, educational service districts, and other education providers selected under section 3 of this act that have assumed the primary responsibility to administer and provide education programs under this chapter. The allocation of moneys to any private contractor is contingent upon and must be in accordance with a contract between the private contractor and the department of corrections; and

(2) Adopt rules in accordance with chapter 34.05 RCW that establish reporting, program compliance, audit, and such other accountability requirements as are reasonably necessary to implement this chapter and related provisions of the biennial operating act effectively.

**Sec. 10.** RCW 72.09.460 and 1997 c 338 s 43 are each amended to read as follows:

(1) The legislature intends that all inmates be required to participate in department-approved education programs, work programs, or both, unless exempted under subsection (4) of this section. Eligible inmates who refuse to participate in available education or work programs available at no charge to the inmates shall lose privileges according to the system established under RCW 72.09.130. Eligible inmates who are required to contribute financially to an education or work program and refuse to contribute shall be placed in another work program. Refusal to contribute shall not result in a loss of privileges. The legislature recognizes more inmates may agree to participate in education and work programs than are available. The department must make every effort to achieve maximum public benefit by placing inmates in available and appropriate education and work programs.

(2) The department shall provide access to a program of education to all offenders who are under the age of eighteen and who have not met high school graduation or general equivalency diploma requirements in accordance with chapter 28A.-- RCW (sections 1 through 9 of this act). The program of education established by the department and education provider under section 3 of this act for offenders under the age of eighteen must provide each offender a choice of curriculum that will assist the inmate in achieving a high school diploma or general equivalency diploma. The program of education may include but not be limited to basic education, prevocational training, work ethic skills, conflict resolution counseling, substance abuse intervention, and anger management counseling. The curriculum may balance these and other rehabilitation, work, and training components.

(3) The department shall, to the extent possible and considering all available funds, prioritize its resources to meet the following goals for inmates in the order listed:

(a) Achievement of basic academic skills through obtaining a high school diploma or its equivalent and achievement of vocational skills necessary for purposes of work programs and for an inmate to qualify for work upon release;

(b) Additional work and education programs based on assessments and placements under subsection (5) of this section; and

(c) Other work and education programs as appropriate.

(4) The department shall establish, by rule, objective medical standards to determine when an inmate is physically or mentally unable to participate in available education or work programs. When the department determines an inmate is permanently unable to participate in any available education or work program due to a medical condition, the inmate is exempt from the requirement under subsection (1) of this section. When the department determines an inmate is temporarily unable to participate in an education or work program due to a medical condition, the inmate is exempt from the requirement of subsection (1) of this section for the period of time he or she is temporarily disabled. The department shall periodically review the medical condition of all temporarily disabled inmates to ensure the earliest possible entry or reentry by inmates into available programming.

(5) The department shall establish, by rule, standards for participation in department-approved education and work programs. The standards shall address the following areas:

(a) **Assessment.** The department shall assess all inmates for their basic academic skill levels using a professionally accepted method of scoring reading, math, and language skills as grade level equivalents. The department shall determine an inmate's education history, work history, and vocational or work skills. The initial assessment shall be conducted, whenever possible, within the first thirty days of an inmate's entry into the correctional system, except that initial assessments are not required for inmates who are sentenced to life without the possibility of release, assigned to an intensive management unit within the

first thirty days after entry into the correctional system, are returning to the correctional system within one year of a prior release, or whose physical or mental condition renders them unable to complete the assessment process. The department shall track and record changes in the basic academic skill levels of all inmates reflected in any testing or assessment performed as part of their education programming;

(b) Placement. The department shall follow the policies set forth in subsection (1) of this section in establishing criteria for placing inmates in education and work programs. The department shall, to the extent possible, place all inmates whose composite grade level score for basic academic skills is below the eighth grade level in a combined education and work program. The placement criteria shall include at least the following factors:

(i) An inmate's release date and custody level, except an inmate shall not be precluded from participating in an education or work program solely on the basis of his or her release date;

(ii) An inmate's education history and basic academic skills;

(iii) An inmate's work history and vocational or work skills;

(iv) An inmate's economic circumstances, including but not limited to an inmate's family support obligations; and

(v) Where applicable, an inmate's prior performance in department-approved education or work programs;

(c) Performance and goals. The department shall establish, and periodically review, inmate behavior standards and program goals for all education and work programs. Inmates shall be notified of applicable behavior standards and program goals prior to placement in an education or work program and shall be removed from the education or work program if they consistently fail to meet the standards or goals;

(d) Financial responsibility. (i) The department shall establish a formula by which inmates, based on their ability to pay, shall pay all or a portion of the costs or tuition of certain programs. Inmates shall, based on the formula, pay a portion of the costs or tuition of participation in:

(A) Second and subsequent vocational programs associated with an inmate's work programs; and

(B) An associate of arts or baccalaureate degree program when placement in a degree program is the result of a placement made under this subsection;

(ii) Inmates shall pay all costs and tuition for participation in:

(A) Any postsecondary academic degree program which is entered independently of a placement decision made under this subsection; and

(B) Second and subsequent vocational programs not associated with an inmate's work program.

Enrollment in any program specified in (d)(ii) of this subsection shall only be allowed by correspondence or if there is an opening in an education or work program at the institution where an inmate is incarcerated and no other inmate who is placed in a program under this subsection will be displaced; and

(e) Notwithstanding any other provision in this section, an inmate sentenced to life without the possibility of release:

(i) Shall not be required to participate in education programming; and

(ii) May receive not more than one postsecondary academic degree in a program offered by the department or its contracted providers.

If an inmate sentenced to life without the possibility of release requires prevocational or vocational training for a work program, he or she may participate in the training subject to this section.

(6) The department shall coordinate education and work programs among its institutions, to the greatest extent possible, to facilitate continuity of programming among inmates transferred between institutions. Before transferring an inmate enrolled in a program, the department shall consider the effect the transfer will have on the inmate's ability to continue or complete a program. This subsection shall not be used to delay or prohibit a transfer necessary for legitimate safety or security concerns.

(7) Before construction of a new correctional institution or expansion of an existing correctional institution, the department shall adopt a plan demonstrating how cable, closed-circuit, and satellite television will be used for education and training purposes in the institution. The plan shall specify how the use of television in the education and training programs will improve inmates' preparedness for available work programs and job opportunities for which inmates may qualify upon release.

(8) The department shall adopt a plan to reduce the per-pupil cost of instruction by, among other methods, increasing the use of volunteer instructors and implementing technological efficiencies. The plan shall be adopted by December 1996 and shall be transmitted to the legislature upon adoption. The department shall, in adoption of the plan, consider distance learning, satellite instruction, video tape usage, computer-aided instruction, and flexible scheduling of offender instruction.

(9) Following completion of the review required by section 27(3), chapter 19, Laws of 1995 1st sp. sess. the department shall take all necessary steps to assure the vocation and education programs are relevant to work programs and skills necessary to enhance the employability of inmates upon release.

**Sec. 11.** RCW 41.59.080 and 1975 1st ex.s. c 288 s 9 are each amended to read as follows:

The commission, upon proper application for certification as an exclusive bargaining representative or upon petition for change of unit definition by the employer or any employee organization within the time limits specified in RCW 41.59.070(3), and after hearing upon reasonable notice, shall determine the unit appropriate for the purpose of collective bargaining. In determining, modifying or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the educational employees; the history of collective bargaining; the extent of organization among the educational employees; and the desire of the educational employees; except that:

(1) A unit including nonsupervisory educational employees shall not be considered appropriate unless it includes all such nonsupervisory educational employees of the employer; and

(2) A unit that includes only supervisors may be considered appropriate if a majority of the employees in such category indicate by vote that they desire to be included in such a unit; and

(3) A unit that includes only principals and assistant principals may be considered appropriate if a majority of such employees indicate by vote that they desire to be included in such a unit; and

(4) A unit that includes both principals and assistant principals and other supervisory employees may be considered appropriate if a majority of the employees in each category indicate by vote that they desire to be included in such a unit; and

(5) A unit that includes supervisors and/or principals and assistant principals and nonsupervisory educational employees may be considered appropriate if a majority of the employees in each category indicate by vote that they desire to be included in such a unit; and

(6) A unit that includes only employees in vocational-technical institutes or occupational skill centers may be considered to constitute an appropriate bargaining unit if the history of bargaining in any such school district so justifies; and

(7) Notwithstanding the definition of collective bargaining, a unit that contains only supervisors and/or principals and assistant principals shall be limited in scope of bargaining to compensation, hours of work, and the number of days of work in the annual employment contracts; and

(8) The bargaining unit of certificated employees of school districts, educational service districts, or institutions of higher education that are education providers under chapter 28A.— RCW (sections 1 through 9 of this act) must be limited to the employees working as education providers to juveniles in each adult correctional facility maintained by the department of corrections and must be separate from other bargaining units in school districts, educational service districts, or institutions of higher education.

**NEW SECTION.** Sec. 12. A new section is added to chapter 41.56 RCW to read as follows:

This chapter applies to the bargaining unit of classified employees of school districts, educational service districts, or institutions of higher education that are education providers under chapter 28A.— RCW (sections 1 through 9 of this act). Such bargaining units must be limited to the employees working as education providers to juveniles in each adult correctional facility maintained by the department of corrections and must be separate from other bargaining units in school districts, educational service districts, or institutions of higher education.

Sec. 13. RCW 28A.310.300 and 1990 c 33 s 283 are each amended to read as follows:



In addition to other powers and duties as provided by law, each educational service district superintendent shall:

(1) Assist the school districts in preparation of their budgets as provided in chapter 28A.505 RCW.

(2) Enforce the provisions of the compulsory attendance law as provided in RCW 28A.225.010 through (~~28A.225.150~~) 28A.225.140, 28A.200.010, and 28A.200.020.

(3) Perform duties relating to capital fund aid by nonhigh districts as provided in chapter 28A.540 RCW.

(4) Carry out the duties and issue orders creating new school districts and transfers of territory as provided in chapter 28A.315 RCW.

(5) Perform the limited duties as provided in chapter 28A.— RCW (sections 1 through 9 of this act).

(6) Perform all other duties prescribed by law and the educational service district board.

**Sec. 14.** RCW 28A.225.010 and 1996 c 134 s 1 are each amended to read as follows:

(1) All parents in this state of any child eight years of age and under eighteen years of age shall cause such child to attend the public school of the district in which the child resides and such child shall have the responsibility to and therefore shall attend for the full time when such school may be in session unless:

(a) The child is attending an approved private school for the same time or is enrolled in an extension program as provided in RCW 28A.195.010(4);

(b) The child is receiving home-based instruction as provided in subsection (4) of this section;

(c) The child is attending an education center as provided in chapter 28A.205 RCW;

(d) The school district superintendent of the district in which the child resides shall have excused such child from attendance because the child is physically or mentally unable to attend school, is attending a residential school operated by the department of social and health services, is incarcerated in an adult correctional facility, or has been temporarily excused upon the request of his or her parents for purposes agreed upon by the school authorities and the parent: **PROVIDED**, That such excused absences shall not be permitted if deemed to cause a serious adverse effect upon the student's educational progress: **PROVIDED FURTHER**, That students excused for such temporary absences may be claimed as full time equivalent students to the extent they would otherwise have been so claimed for the purposes of RCW 28A.150.250 and 28A.150.260 and shall not affect school district compliance with the provisions of RCW 28A.150.220; or

(e) The child is sixteen years of age or older and:

(i) The child is regularly and lawfully employed and either the parent agrees that the child should not be required to attend school or the child is emancipated in accordance with chapter 13.64 RCW;

(ii) The child has already met graduation requirements in accordance with state board of education rules and regulations; or

(iii) The child has received a certificate of educational competence under rules and regulations established by the state board of education under RCW 28A.305.190.

(2) A parent for the purpose of this chapter means a parent, guardian, or person having legal custody of a child.

(3) An approved private school for the purposes of this chapter and chapter 28A.200 RCW shall be one approved under regulations established by the state board of education pursuant to RCW 28A.305.130.

(4) For the purposes of this chapter and chapter 28A.200 RCW, instruction shall be home-based if it consists of planned and supervised instructional and related educational activities, including a curriculum and instruction in the basic skills of occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of an appreciation of art and music, provided for a number of hours equivalent to the total annual program hours per grade level established for approved private schools under RCW 28A.195.010 and 28A.195.040 and if such activities are:

(a) Provided by a parent who is instructing his or her child only and are supervised by a certificated person. A certificated person for purposes of this chapter and chapter 28A.200 RCW shall be a person certified under chapter 28A.410 RCW. For purposes of this section, "supervised by a certificated person" means: The planning by the certificated person and the parent of objectives consistent with this subsection; a minimum each month of an average of one contact hour per week with the child being supervised by the certificated person; and evaluation of such child's progress by the certificated person. The number of children supervised by the certificated person shall not exceed thirty for purposes of this subsection; or

(b) Provided by a parent who is instructing his or her child only and who has either earned forty-five college level quarter credit hours or its equivalent in semester hours or has completed a course in home-based instruction at a postsecondary institution or a vocational-technical institute; or

(c) Provided by a parent who is deemed sufficiently qualified to provide home-based instruction by the superintendent of the local school district in which the child resides.

(5) The legislature recognizes that home-based instruction is less structured and more experiential than the instruction normally provided in a classroom setting. Therefore, the provisions of subsection (4) of this section relating to the nature and quantity of instructional and related educational activities shall be liberally construed.

**NEW SECTION.** Sec. 15. A new section is added to chapter 28A.150 RCW to read as follows:

(1) The department of corrections and the superintendent of public instruction shall conduct a study to determine the educational needs of inmates under the age

of twenty-one incarcerated in jail and prison, the impact of providing educational services and special educational services to those inmates on the security and penological interests of the correctional institutions that incarcerate those inmates, and the ability of local school districts, the community and technical colleges, private vendors, juvenile detention centers, and the correctional institutions to provide those educational and special services.

(2) The department and the superintendent of public instruction shall consult with the following groups:

- (a) The Washington association of school administrators;
- (b) The individual school districts and educational service districts in which the department or a county jail may operate a school for inmates under age twenty-one;
- (c) The Washington association of counties;
- (d) The state board for community and technical colleges;
- (e) The higher education coordinating board;
- (f) The United States department of education office of special education programs and the office for civil rights;
- (g) The juvenile rehabilitation administration's residential school programs;
- (h) The juvenile court administrators;
- (i) The attorney general;
- (j) Columbia legal services;
- (k) The Washington association of prosecuting attorneys;
- (l) The school districts that provide educational services to juvenile offenders incarcerated in state juvenile residential schools; and
- (m) Any other person or association that in the opinion of the department or the superintendent of public instruction may assist in the study.

(3) No later than May 1, 1998, the department and the superintendent of public instruction shall provide to the committees on education in the house and senate, the criminal justice and corrections committee in the house, the human services and corrections committee in the senate, and the house and senate fiscal committees, a profile of all offenders under the age of twenty-one who are incarcerated in a department of corrections' facility. The profile shall identify the offenders individually by the following:

- (a) Age;
- (b) Offense or offenses of commitment;
- (c) Criminal history;
- (d) Anticipated length of stay;
- (e) The number of serious infractions committed by the offender during incarceration and the number of times, if any, the offender has been placed in an intensive management unit;
- (f) The offender's custody level;
- (g) Whether the offender has a high school diploma or a general equivalency diploma;
- (h) The last grade the offender completed;

(i) Whether the offender, in the educational placement prior to incarceration was identified as a child with a disability or had an individualized education program;

(j) Whether the offender would qualify for transition planning and services under 20 U.S.C. Sec. 1414(d)(6);

(k) Whether the department has security or penological interests that warrant modification of an existing individualized education program or placement as provided by 20 U.S.C. Sec. 1414(d)(6);

(l) Whether the offender has participated in any educational programs offered by the department; and

(m) Whether the offender may be in need of special education and related services. This subsection does not require the department or the superintendent to evaluate an offender to determine if the offender is a child with disabilities in need of special education and related services.

(4) No later than September 1, 1998, the department of corrections and the superintendent of public instruction shall provide to the committees identified in subsection (3) of this section a profile of inmates under the age of twenty-one confined in county jails between the effective date of this section and August 1, 1998. The profile shall identify the inmates' characteristics as listed in subsection (3) of this section and shall include all inmates detained in a county correctional facility whether arrested, charged, pending trial, or convicted. The department and the superintendent of public instruction shall assist the counties in gathering this information.

(5) No later than September 1, 1998, the department and the superintendent of public instruction shall make a preliminary report to the committees listed in subsection (3) of this section, identifying the educational needs of inmates under the age of twenty-one in adult correctional facilities, the impact of providing educational services to those inmates on the security and penological interests of the correctional institutions that incarcerate those inmates, and the ability of local school districts, the community and technical colleges, private vendors, juvenile detention centers, and the correctional institutions to provide those educational services. The department and the superintendent, in consultation with the office of financial management, shall estimate the various capital and operating costs of providing basic educational services or basic skills education to offenders under age twenty-one, and special education and related services to all inmates under age twenty-one or to just those inmates under age eighteen and between the ages of eighteen and twenty-one who were identified as a child with a disability or had an individualized education program in the educational placement prior to incarceration in an adult correctional facility. The department and the superintendent of public instruction shall inform the committees as to which educational entity or entities are able and willing to provide those educational services.

(6) No later than November 1, 1998, the department and the superintendent of public instruction shall make final recommendations to the committees.

**NEW SECTION.** Sec. 16. Sections 1 through 9 of this act constitute a new chapter in Title 28A RCW.

**NEW SECTION.** Sec. 17. Sections 1 through 9 and 11 through 15 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

**NEW SECTION.** Sec. 18. Section 10 of this act takes effect September 1, 1998.

**NEW SECTION.** Sec. 19. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate March 9, 1998.

Passed the House March 5, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.

## CHAPTER 245

[Senate Bill 6219]

### REPORTS TO THE LEGISLATURE—

#### ELIMINATION OF OBSOLETE OR UNNECESSARY REPORTS

AN ACT Relating to reports to the legislature; making technical corrections to the Revised Code of Washington; amending RCW 2.14.040, 9.95.212, 17.10.070, 17.26.015, 18.16.050, 18.50.150, 19.118.080, 19.27A.020, 19.94.185, 27.04.110, 28A.300.300, 28A.415.260, 28A.630.825, 28B.10.887, 28B.125.010, 28B.20.130, 28B.20.382, 28B.25.020, 28B.30.150, 28B.30.537, 28B.50.259, 28B.65.050, 28B.80.280, 28B.80.360, 28B.80.612, 29.04.200, 36.32.340, 36.47.020, 36.47.070, 36.70A.385, 36.79.060, 38.52.535, 39.29.068, 39.84.090, 39.96.070, 41.04.630, 41.05.190, 41.05.220, 41.05.280, 41.06.285, 41.50.780, 41.52.040, 41.52.070, 42.16.017, 43.01.240, 43.06.115, 43.121.130, 43.147.070, 43.163.090, 43.163.120, 43.168.130, 43.175.020, 43.19.19052, 43.19.19362, 43.19.554, 43.19A.030, 43.20.235, 43.20A.725, 43.21J.030, 43.31.411, 43.31.526, 43.33.130, 43.41.240, 43.51.400, 43.51.944, 43.52.360, 43.52.560, 43.52.565, 43.63A.550, 43.70.066, 43.70.240, 43.70.330, 43.70.530, 43.70.545, 43.70.555, 43.70.600, 43.72.860, 43.99F.040, 43.200.180, 43.200.190, 43.200.200, 43.210.050, 43.330.090, 43.07.290, 44.40.070, 44.40.150, 46.20.520, 46.61.165, 46.81A.020, 47.01.250, 47.01.900, 47.04.180, 47.05.021, 47.14.050, 47.24.010, 48.41.070, 49.30.005, 50.44.035, 50.60.901, 50.62.040, 50.72.070, 51.36.080, 59.22.090, 69.43.010, 69.50.201, 69.50.525, 70.105.160, 70.112.050, 70.119A.160, 70.129.160, 70.148.020, 70.148.050, 70.162.050, 70.168.030, 70.170.060, 70.175.100, 70.180.110, 70.180.120, 70.190.050, 70.190.100, 70.190.110, 70.195.010, 70.24.400, 70.41.320, 70.93.250, 70.94.162, 70.94.656, 70.95.263, 70.95.810, 70.95C.030, 70.95C.250, 70.96A.420, 70.96A.500, 71.24.410, 72.09.040, 72.09.560, 72.23.025, 72.65.210, 74.04.025, 74.09.415, 74.09.520, 74.13.045, 74.13.055, 74.13.260, 74.14A.050, 74.20.340, 74.41.070, 75.24.060, 75.28.770, 75.30.480, 75.50.100, 75.52.110, 75.54.010, 77.12.690, 77.12.710, 77.32.060, 78.56.160, 79.01.295, 80.01.090, 81.04.520, 81.53.281, 81.80.450, 82.33A.010, 82.60.110, 84.33.200, 84.41.130, 90.22.060, 90.48.480, and 90.56.100; reenacting and amending RCW 41.06.070, 43.43.934, 67.70.050, 71.24.035, 81.104.110, and 90.42.010; repealing RCW 13.04.460, 19.02.885, 19.27.078, 26.23.0401, 28B.04.070, 28B.06.050, 28B.10.692, 28B.30.636, 28B.50.900, 28B.106.900, 41.50.100, 43.03.260, 43.05.900, 43.43.560, 43.43.752, 43.59.130, 43.63A.215, 43.63A.220, 43.72.850, 43.88.065, 43.121.090, 43.163.900, 46.23.030, 47.01.220, 47.12.249, 47.26.163, 47.60.470, 47.60.544, 47.82.050, 48.87.090, 48.88.060, 49.46.150, 50.65.331, 51.32.116, 59.28.110, 66.08.028, 67.32.120, 69.51.070, 70.95C.090, 70.95E.070, 70.98.210, 70.114A.090, 70.120.180, 70.120.220, 70.123.060, 70.128.180, 70.149.110, 70.180.900, 72.02.170, 75.08.460, 75.50.050, 75.50.120, 77.04.111, 80.36.380, 80.36.860, 82.01.110, 82.61.070,

82.63.080, 90.48.369, and 90.58.330; repealing 1994 sp.s. c 7 s 517 (uncodified); repealing 1994 c 40 s 5 (uncodified); repealing 1996 c 152 s 3 (uncodified); and providing expiration dates.

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

**Sec. 1.** RCW 2.14.040 and 1988 c 109 s 15 are each amended to read as follows:

The administrator for the courts, under the direction of the board for judicial administration, shall administer the plan. The administrator shall:

- (1) Deposit or invest contributions to the plan consistent with RCW 2.14.080;
- (2) Credit investment earnings or interest to individual judicial retirement accounts consistent with RCW 2.14.070;
- (3) Keep or cause to be kept full and adequate accounts and records of the assets, obligations, transactions, and affairs of any judicial retirement accounts created under this chapter; and
- (4) ~~((File an annual report of the financial condition, transactions, and affairs of the judicial retirement accounts. A copy of the annual report shall be filed with the speaker of the house of representatives, the president of the senate, the governor, and the state auditor; and~~  
~~—(5)))~~ Adopt rules necessary to carry out this chapter.

**Sec. 2.** RCW 9.95.212 and 1995 1st sp.s. c 19 s 31 are each amended to read as follows:

~~((+)))~~ The Washington state law and justice advisory council, appointed under RCW 72.09.300(7), shall by October 1, 1995, develop proposed standards for the supervision of misdemeanor probationers sentenced by superior courts under RCW 9.92.060 or 9.95.210. In developing the standards, the council shall consider realistic current funding levels or reasonable expansions thereof, the recommendations of the department of corrections, county probation departments, superior and district court judges, and the misdemeanor corrections association. The supervision standards shall establish classifications of misdemeanor probationers based upon the seriousness of the offense, the perceived risks to the community, and other relevant factors. The standards may provide discretion to officials supervising misdemeanor probationers to adjust the supervision standards, for good cause, based upon individual circumstances surrounding the probationer. The supervision standards shall include provisions for reciprocal supervision of offenders who are sentenced in counties other than their counties of residence.

~~((2))~~ ~~The department of corrections shall report to the legislature by December 1, 1995, the estimated cost of fully implementing the proposed standards. The report shall rank by relative costs each of the elements of the proposed standards and shall identify the total daily supervision cost per offender. The report shall also include an accounting of the amount of supervision fees assessed and collected by the department under RCW 9.95.214.)~~

**Sec. 3.** RCW 17.10.070 and 1997 c 353 s 8 are each amended to read as follows:

(1) In addition to the powers conferred on the state noxious weed control board under other provisions of this chapter, it has the power to:

(a) Employ a state noxious weed control board executive secretary, and additional persons as it deems necessary, to disseminate information relating to noxious weeds to county noxious weed control boards and weed districts, to coordinate the educational and weed control efforts of the various county and regional noxious weed control boards and weed districts, and to assist the board in carrying out its responsibilities;

(b) Adopt, amend, or repeal rules, pursuant to the administrative procedure act, chapter 34.05 RCW, as may be necessary to carry out the duties and authorities assigned to the board by this chapter.

(2) The state noxious weed control board shall provide a written report before January 1<sup>st</sup> of each odd-numbered year to ~~((the governor, the legislature,))~~ the county noxious weed control boards~~((;))~~ and the weed districts showing the expenditure of state funds on noxious weed control; specifically how the funds were spent; the status of the state, county, and district programs; and recommendations for the continued best use of state funds for noxious weed control. The report shall include recommendations as to the long-term needs regarding weed control.

**Sec. 4.** RCW 17.26.015 and 1995 c 255 s 10 are each amended to read as follows:

(1) The state department of agriculture is the lead agency for the control of spartina and purple loosestrife with the advice of the state noxious weed control board.

(2) Responsibilities of the lead agency include:

(a) Coordination of the control program including memorandums of understanding, contracts, and agreements with local, state, federal, and tribal governmental entities and private parties;

(b) Preparation of a state-wide spartina management plan utilizing integrated vegetation management strategies that encompass all of Washington's tidelands. The plan shall be developed in cooperation with local, state, federal, and tribal governments, private landowners, and concerned citizens. The plan shall prioritize areas for control. Nothing in this subsection prohibits the department from taking action to control spartina in a particular area of the state in accordance with a plan previously prepared by the state while preparing the state-wide plan;

(c) Directing on the ground control efforts that include, but are not limited to: (i) Control work and contracts; (ii) spartina survey; (iii) collection and maintenance of spartina location data; (iv) purchasing equipment, goods, and services; (v) survey of threatened and endangered species; and (vi) site-specific environmental information and documents; and

(d) Evaluating the effectiveness of the control efforts.

The lead agency shall report to the appropriate standing committees of the house of representatives and the senate no later than ~~((May 15th and))~~ December

15th of each year through the year 1999 on the progress of the program, the number of acres treated by various methods of control, and on the funds spent.

Sec. 5. RCW 18.16.050 and 1997 c 179 s 1 are each amended to read as follows:

(1) There is created a state cosmetology, barbering, esthetics, and manicuring advisory board consisting of seven members appointed by the director. These seven members of the board shall include a representative of a private cosmetology school and a representative of a public vocational technical school involved in cosmetology training, with the balance made up of currently practicing licensees who have been engaged in the practice of manicuring, esthetics, barbering, or cosmetology for at least three years. One member of the board shall be a consumer who is unaffiliated with the cosmetology, barbering, esthetics, or manicuring industry. On June 30, 1995, the director shall appoint seven new members to the board. These new members shall serve a term of three years. The director shall appoint two new members including: (a) One representative with employee supervisory experience from a chain salon having ten or more salons; and (b) one representative from the industry at large who has substantial salon and school experience. The board shall cease to exist on June 30, 1998. Any members serving on the advisory board as of July 1, 1995, or who are appointed after July 27, 1997, are eligible to be reappointed, should the advisory board be extended beyond June 30, 1998. Any board member may be removed for just cause. The director may appoint a new member to fill any vacancy on the board for the remainder of the unexpired term.

~~(2) ((The board appointed on June 30, 1995, together with the director or the director's designee, shall conduct a thorough review of educational requirements, licensing requirements, and enforcement and health standards for persons engaged in cosmetology, barbering, esthetics, or manicuring and shall prepare a report to be delivered to the governor, the director, and the chairpersons of the governmental operations committees of the house of representatives and the senate. The report must summarize their findings and make recommendations, including, if appropriate, recommendations for legislation reforming and restructuring the regulation of cosmetology, barbering, esthetics, and manicuring.~~

~~---~~ (3)) Board members shall be entitled to compensation pursuant to RCW 43.03.240 for each day spent conducting official business and to reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060.

~~((4))~~ (3) The board may seek the advice and input of officials from the following state agencies: (a) The work force training and education coordinating board; (b) the department of employment security; (c) the department of labor and industries; (d) the department of health; (e) the department of licensing; and (f) the department of revenue.

Sec. 6. RCW 18.50.150 and 1991 c 3 s 115 are each amended to read as follows:



The midwifery advisory committee shall advise and make recommendations to the secretary on issues including, but not limited to, continuing education, mandatory reexamination, and peer review. (~~The secretary shall transmit the recommendations to the social and health services committee of the senate and the human services committee of the house of representatives on an annual basis.~~)

**Sec. 7.** RCW 19.118.080 and 1995 c 254 s 5 are each amended to read as follows:

(1) Except as provided in RCW 19.118.160, the attorney general shall contract with one or more private entities to conduct arbitration proceedings in order to settle disputes between consumers and manufacturers as provided in this chapter, and each private entity shall constitute a new motor vehicle arbitration board for purposes of this chapter. The entities shall not be affiliated with any manufacturer or new motor vehicle dealer and shall have available the services of persons with automotive technical expertise to assist in resolving disputes under this chapter. No private entity or its officers or employees conducting board proceedings and no arbitrator presiding at such proceedings shall be directly involved in the manufacture, distribution, sale, or warranty service of any motor vehicle. Payment to the entities for the arbitration services shall be made from the new motor vehicle arbitration account.

(2) The attorney general shall adopt rules for the uniform conduct of the arbitrations by the boards whether conducted by a private entity or by the attorney general pursuant to RCW 19.118.160, which rules shall include but not be limited to the following procedures:

(a) At all arbitration proceedings, the parties are entitled to present oral and written testimony, to present witnesses and evidence relevant to the dispute, to cross-examine witnesses, and to be represented by counsel.

(b) A dealer, manufacturer, or other persons shall produce records and documents requested by a party which are reasonably related to the dispute. If a dealer, manufacturer, or other person refuses to comply with such a request, a party may present a request to the board for the attorney general to issue a subpoena on behalf of the board.

The subpoena shall be issued only for the production of records and documents which the board has determined are reasonably related to the dispute, including but not limited to documents described in RCW 19.118.031 (4) or (5).

If a party fails to comply with the subpoena, the arbitrator may at the outset of the arbitration hearing impose any of the following sanctions: (i) Find that the matters which were the subject of the subpoena, or any other designated facts, shall be taken to be established for purposes of the hearing in accordance with the claim of the party which requested the subpoena; (ii) refuse to allow the disobedient party to support or oppose the designated claims or defenses, or prohibit that party from introducing designated matters into evidence; (iii) strike claims or defenses, or parts thereof; or (iv) render a decision by default against the disobedient party.

If a nonparty fails to comply with a subpoena and upon an arbitrator finding that without such compliance there is insufficient evidence to render a decision in the dispute, the attorney general shall enforce such subpoena in superior court and the arbitrator shall continue the arbitration hearing until such time as the nonparty complies with the subpoena or the subpoena is quashed.

(c) A party may obtain written affidavits from employees and agents of a dealer, a manufacturer or other party, or from other potential witnesses, and may submit such affidavits for consideration by the board.

(d) Records of the board proceedings shall be open to the public. The hearings shall be open to the public to the extent practicable.

(e) Where the board proceedings are conducted by one or more private entities, a single arbitrator may be designated to preside at such proceedings.

(3) A consumer shall exhaust the new motor vehicle arbitration board remedy or informal dispute resolution settlement procedure under RCW 19.118.150 before filing any superior court action.

(4) The attorney general shall maintain records of each dispute submitted to the new motor vehicle arbitration board, including an index of new motor vehicles by year, make, and model.

(5) The attorney general shall compile aggregate annual statistics for all disputes submitted to, and decided by, the new motor vehicle arbitration board, as well as annual statistics for each manufacturer that include, but shall not be limited to, the number and percent of: (a) Replacement motor vehicle requests; (b) purchase price refund requests; (c) replacement motor vehicles obtained in prehearing settlements; (d) purchase price refunds obtained in prehearing settlements; (e) replacement motor vehicles awarded in arbitration; (f) purchase price refunds awarded in arbitration; (g) board decisions neither complied with during the forty calendar day period nor petitioned for appeal within the thirty calendar day period; (h) board decisions appealed categorized by consumer or manufacturer; (i) the nature of the court decisions and who the prevailing party was; (j) appeals that were held by the court to be brought without good cause; and (k) appeals that were held by the court to be brought solely for the purpose of harassment. The statistical compilations shall be public information.

~~(6) (The attorney general shall submit biennial reports of the information in this section to the senate and house of representatives committees on commerce and labor, with the first report due January 1, 1990.~~

~~(7))~~ The attorney general shall adopt rules to implement this chapter. Such rules shall include uniform standards by which the boards shall make determinations under this chapter, including but not limited to rules which provide:

(a) A board shall find that a nonconformity exists if it determines that the consumer's new motor vehicle has a defect, serious safety defect, or condition that substantially impairs the use, value, or safety of the vehicle.

(b) A board shall find that a reasonable number of attempts to repair a nonconformity have been undertaken if: (i) The same serious safety defect has been subject to diagnosis or repair two or more times, at least one of which is

during the period of coverage of the applicable manufacturer's written warranty, and the serious safety defect continues to exist; (ii) the same nonconformity has been subject to diagnosis or repair four or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the nonconformity continues to exist; or (iii) the vehicle is out-of-service by reason of diagnosis or repair of one or more nonconformities for a cumulative total of thirty calendar days, at least fifteen of them during the period of the applicable manufacturer's written warranty. For purposes of this subsection, the manufacturer's written warranty shall be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first.

(c) A board shall find that a manufacturer has failed to comply with RCW 19.118.041 if it finds that the manufacturer, its agent, or the new motor vehicle dealer has failed to correct a nonconformity after a reasonable number of attempts and the manufacturer has failed, within forty days of the consumer's written request, to repurchase the vehicle or replace the vehicle with a vehicle identical or reasonably equivalent to the vehicle being replaced.

~~((8))~~ (7) The attorney general shall provide consumers with information regarding the procedures and remedies under this chapter.

**Sec. 8.** RCW 19.27A.020 and 1996 c 186 s 502 are each amended to read as follows:

(1) No later than January 1, 1991, the state building code council shall ~~((promulgate))~~ adopt rules to be known as the Washington state energy code as part of the state building code.

(2) The council shall follow the legislature's standards set forth in this section to ~~((promulgate))~~ adopt rules to be known as the Washington state energy code. The Washington state energy code shall be designed to require new buildings to meet a certain level of energy efficiency, but allow flexibility in building design, construction, and heating equipment efficiencies within that framework. The Washington state energy code shall be designed to allow space heating equipment efficiency to offset or substitute for building envelope thermal performance.

(3) The Washington state energy code shall take into account regional climatic conditions. Climate zone 1 shall include all counties not included in climate zone 2. Climate zone 2 includes: Adams, Chelan, Douglas, Ferry, Grant, Kittitas, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, and Whitman counties.

(4) The Washington state energy code for residential buildings shall require:

(a) New residential buildings that are space heated with electric resistance heating systems to achieve energy use equivalent to that used in typical buildings constructed with:

(i) Ceilings insulated to a level of R-38. The code shall contain an exception which permits single rafter or joist vaulted ceilings insulated to a level of R-30 (R value includes insulation only);

(ii) In zone 1, walls insulated to a level of R-19 (R value includes insulation only), or constructed with two by four members, R-13 insulation batts, R-3.2 insulated sheathing, and other normal assembly components; in zone 2 walls insulated to a level of R-24 (R value includes insulation only), or constructed with two by six members, R-22 insulation batts, R-3.2 insulated sheathing, and other normal construction assembly components; for the purpose of determining equivalent thermal performance, the wall U-value shall be 0.058 in zone 1 and 0.044 in zone 2;

(iii) Below grade walls, insulated on the interior side, to a level of R-19 or, if insulated on the exterior side, to a level of R-10 in zone 1 and R-12 in zone 2 (R value includes insulation only);

(iv) Floors over unheated spaces insulated to a level of R-30 (R value includes insulation only);

(v) Slab on grade floors insulated to a level of R-10 at the perimeter;

(vi) Double glazed windows with values not more than U-0.4;

(vii) In zone 1 the glazing area may be up to twenty-one percent of floor area and in zone 2 the glazing area may be up to seventeen percent of floor area where consideration of the thermal resistance values for other building components and solar heat gains through the glazing result in thermal performance equivalent to that achieved with thermal resistance values for other components determined in accordance with the equivalent thermal performance criteria of (a) of this subsection and glazing area equal to fifteen percent of the floor area. Throughout the state for the purposes of determining equivalent thermal performance, the maximum glazing area shall be fifteen percent of the floor area; and

(viii) Exterior doors insulated to a level of R-5; or an exterior wood door with a thermal resistance value of less than R-5 and values for other components determined in accordance with the equivalent thermal performance criteria of (a) of this subsection.

(b) New residential buildings which are space-heated with all other forms of space heating to achieve energy use equivalent to that used in typical buildings constructed with:

(i) Ceilings insulated to a level of R-30 in zone 1 and R-38 in zone 2 the code shall contain an exception which permits single rafter or joist vaulted ceilings insulated to a level of R-30 (R value includes insulation only);

(ii) Walls insulated to a level of R-19 (R value includes insulation only), or constructed with two by four members, R-13 insulation batts, R-3.2 insulated sheathing, and other normal assembly components;

(iii) Below grade walls, insulated on the interior side, to a level of R-19 or, if insulated on the exterior side, to a level of R-10 in zone 1 and R-12 in zone 2 (R value includes insulation only);

(iv) Floors over unheated spaces insulated to a level of R-19 in zone 1 and R-30 in zone 2 (R value includes insulation only);

(v) Slab on grade floors insulated to a level of R-10 at the perimeter;

(vi) Heat pumps with a minimum heating season performance factor (HSPF) of 6.8 or with all other energy sources with a minimum annual fuel utilization efficiency (AFUE) of seventy-eight percent;

(vii) Double glazed windows with values not more than U-0.65 in zone 1 and U-0.60 in zone 2. The state building code council, in consultation with the department of community, trade, and economic development, shall review these U-values, and, if economically justified for consumers, shall amend the Washington state energy code to improve the U-values by December 1, 1993. The amendment shall not take effect until July 1, 1994; and

(viii) In zone 1, the maximum glazing area shall be twenty-one percent of the floor area. In zone 2 the maximum glazing area shall be seventeen percent of the floor area. Throughout the state for the purposes of determining equivalent thermal performance, the maximum glazing area shall be fifteen percent of the floor area.

(c) The requirements of (b)(ii) of this subsection do not apply to residences with log or solid timber walls with a minimum average thickness of three and one-half inches and with space heat other than electric resistance.

(d) The state building code council may approve an energy code for pilot projects of residential construction that use innovative energy efficiency technologies intended to result in savings that are greater than those realized in the levels specified in this section.

(5) U-values for glazing shall be determined using the area weighted average of all glazing in the building. U-values for vertical glazing shall be determined, certified, and labeled in accordance with the appropriate national fenestration rating council (NFRC) standard, as determined and adopted by the state building code council. Certification of U-values shall be conducted by a certified, independent agency licensed by the NFRC. The state building code council may develop and adopt alternative methods of determining, certifying, and labeling U-values for vertical glazing that may be used by fenestration manufacturers if determined to be appropriate by the council. The state building code council shall review and consider the adoption of the NFRC standards for determining, certifying, and labeling U-values for doors and skylights when developed and published by the NFRC. The state building code council may develop and adopt appropriate alternative methods for determining, certifying, and labeling U-values for doors and skylights. U-values for doors and skylights determined, certified, and labeled in accordance with the appropriate NFRC standard shall be acceptable for compliance with the state energy code. Sealed insulation glass, where used, shall conform to, or be in the process of being tested for, ASTM E-774-81 class A or better.

(6) The minimum state energy code for new nonresidential buildings shall be the Washington state energy code, 1986 edition, as amended.

(7)(a) Except as provided in (b) of this subsection, the Washington state energy code for residential structures shall preempt the residential energy code of each city, town, and county in the state of Washington.

(b) The state energy code for residential structures does not preempt a city, town, or county's energy code for residential structures which exceeds the requirements of the state energy code and which was adopted by the city, town, or county prior to March 1, 1990. Such cities, towns, or counties may not subsequently amend their energy code for residential structures to exceed the requirements adopted prior to March 1, 1990.

(8) The state building code council shall consult with the department of community, trade, and economic development as provided in RCW 34.05.310 prior to publication of proposed rules. The department of community, trade, and economic development shall review the proposed rules for consistency with the guidelines adopted in subsection (4) of this section. The director of the department of community, trade, and economic development shall recommend to the state building code council any changes necessary to conform the proposed rules to the requirements of this section.

~~((9) The state building code council shall conduct a study of county and city enforcement of energy codes in the state. In conducting the study, the council shall conduct public hearings at designated council meetings to seek input from interested individuals and organizations, and to the extent possible, hold these meetings in conjunction with adopting rules under this section. The study shall include recommendations as to how code enforcement may be improved. The findings of the study shall be submitted in a report to the legislature no later than January 1, 1991.~~

~~—(10) If any electric utility providing electric service to customers in the state of Washington purchases at least one percent of its firm energy load from a federal agency, pursuant to section 5.(b)(1) of the Pacific Northwest electric power planning and conservation act (P.L. 96-501), and such utility is unable to obtain from that agency at least fifty percent of the funds for payments required by RCW 19.27A.035, the amendments to this section by chapter 2, Laws of 1990 shall be null and void, and the 1986 state energy code shall be in effect, except that a city, town, or county may enforce a local energy code with more stringent energy requirements adopted prior to March 1, 1990. This subsection shall expire June 30, 1995.)~~

Sec. 9. RCW 19.94.185 and 1995 c 355 s 8 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, all moneys collected under this chapter shall be payable to the director and placed in the weights and measures account hereby established in the agricultural local fund. Moneys deposited in this account shall be used solely for the purposes of implementing or enforcing this chapter. No appropriation is required for the disbursement of moneys from the weights and measures account by the director.

(2) Civil penalties collected by the department under RCW 19.94.510, 19.94.515, and 19.94.517 shall be deposited in the state general fund.

~~((3) By January 1st of each odd-numbered year, the department shall provide a written report on the amount of revenues by major category received under this~~

~~chapter, including the metrology laboratory, for the administration of the weights and measures program by the department. The report shall include the amount of revenue generated for the two previous biennia, an estimate of the amount of funds to be received during the current biennium, and an estimate of the amount of funds to be generated during the next ensuing biennium. The report shall be submitted to the office of financial management and to each committee in the legislature with jurisdiction over programs administered by the department in the house and the senate.))~~

**Sec. 10.** RCW 27.04.110 and 1991 c 91 s 1 are each amended to read as follows:

(1) The learn-in-libraries program is hereby created. The state library commission shall administer the program.

(2) The state library commission may provide grants, with funds appropriated for that purpose, to local libraries to develop and implement learn-in-library programs that provide after school and vacation programs for children. Grant applicants shall be encouraged to develop programs that use older adult volunteers and other community volunteer resources. The programs shall be designed to increase literacy, improve reading skills, encourage reading, and provide homework assistance for school-age children who would otherwise be unsupervised. Applicants shall be encouraged to develop innovative models to provide services.

(3) In addition to grants provided under subsection (2) of this section, the state library commission may provide grants, with funds appropriated for that purpose, to local libraries to develop and implement other innovative programs for children throughout the year. Programs may be developed in cooperation with a school district and occur during the school day. Programs shall be designed to provide services to children or to help provide training to parents or other persons working with children in order to increase literacy, encourage reading, promote reading readiness, and improve reading and other learning skills. The commission shall encourage grant applicants to develop programs that use older adult volunteers and other community volunteer resources and to develop innovative models to provide services.

~~((4) The state library commission shall report to the legislature on the results of the program by December 1, 1991.))~~

**Sec. 11.** RCW 28A.300.300 and 1996 c 273 s 4 are each amended to read as follows:

(1) After effective programs have been identified in accordance with RCW 28A.300.290, the center for the improvement of student learning, or its designee, shall provide information and take other appropriate steps to inform elementary school teachers, principals, curriculum directors, superintendents, school board members, college and university reading instruction faculty, and others of its findings.

(2) The center, in cooperation with state-wide organizations interested in improving literacy, also shall develop and implement strategies to improve reading instruction in the state, with a special emphasis on the instruction of reading in the primary grades using the effective reading programs that have been identified in accordance with RCW 28A.300.290. The strategies may include, but should not be limited to, expanding and improving reading instruction of elementary school teachers in teacher preparation programs, expanded in-service training in reading instruction, the training of paraprofessionals and volunteers in reading instruction, improving classroom-based assessment of reading, and increasing state-wide and regional technical assistance in reading instruction.

~~((3) The center shall submit a status report to appropriate committees of the legislature by December 31, 1996, regarding its efforts to implement RCW 28A.300.290 and subsections (1) and (2) of this section. The report shall include a description of safeguards enacted to ensure the integrity and objectivity of the assistance and advice provided by the center.)~~

**Sec. 12.** RCW 28A.415.260 and 1993 c 336 s 402 are each amended to read as follows:

(1) To the extent specific funds are appropriated for the pilot program in this section, the superintendent of public instruction shall establish a pilot program to support the pairing of full-time mentor teachers with experienced teachers who are having difficulties and full-time mentor teachers with beginning teachers under RCW 28A.415.250.

~~(2) ((The superintendent of public instruction shall submit a report to the legislature by December 31, 1995, with findings about the pilot program. The report shall include an analysis of the effectiveness of the pilot program in the remediation of teachers having difficulties, recommendations regarding continuing the program, and recommendations on new procedures under chapter 28A.405 RCW regarding teachers who have not shown sufficient progress in the area or areas of teaching skills needing improvement.~~

~~—(3)) The superintendent of public instruction shall appoint an oversight committee, which shall include teachers and administrators from the pilot districts, that shall be involved in the evaluation of the pilot program under this section.~~

~~((4)) (3) The superintendent of public instruction shall adopt rules as necessary under chapter 34.05 RCW to implement the pilot program established under subsection (1) of this section.~~

**Sec. 13.** RCW 28A.630.825 and 1994 c 13 s 4 are each amended to read as follows:

The superintendent of public instruction shall:

(1) Approve fifteen to twenty-five demonstration projects in individual school districts and cooperatives, including at least seven projects approved after the effective date of this section;

(2) Make awards for in-service training of teachers and other staff;



- (3) Provide technical assistance;
- (4) Grant waivers from state rules needed to implement the projects, or request such waivers to be granted by the appropriate agency;
- (5) Perform or contract for an evaluation of the projects; and
- (6) Confer on the evaluation design with the selection advisory committee(~~;~~  
and  
~~—(7) Submit to the legislature an interim report on the evaluation by December 31, 1993, and a final report by December 31, 1995).~~

Sec. 14. RCW 28B.10.887 and 1987 c 147 s 8 are each amended to read as follows:

~~((1))~~ After consulting with the higher education coordinating board and the state four-year institutions of higher education, the governor may transfer the administration of this program to another agency which has an appropriate educationally related mission.

~~((2) By December 1, 1989, the higher education coordinating board and any agency administering this program, if applicable, shall make recommendations to the governor and the legislature on any needed changes in the program.)~~

Sec. 15. RCW 28B.125.010 and 1993 c 492 s 270 are each amended to read as follows:

(1) The higher education coordinating board, the state board for community and technical colleges, the superintendent of public instruction, the state department of health, the Washington health services commission, and the state department of social and health services, to be known for the purposes of this section as the committee, shall establish a state-wide health personnel resource plan. The governor shall appoint a lead agency from one of the agencies on the committee.

In preparing the state-wide plan the committee shall consult with the training and education institutions affected by this chapter, health care providers, employers of health care providers, insurers, consumers of health care, and other appropriate entities.

Should a successor agency or agencies be authorized or created by the legislature with planning, coordination, or administrative authority over vocational-technical schools, community colleges, or four-year higher education institutions, the governor shall grant membership on the committee to such agency or agencies and remove the member or members it replaces.

The committee shall appoint subcommittees for the purpose of assisting in the development of the institutional plans required under this chapter. Such subcommittees shall at least include those committee members that have statutory responsibility for planning, coordination, or administration of the training and education institutions for which the institutional plans are being developed. In preparing the institutional plans for four-year institutes of higher education, the subcommittee shall be composed of at least the higher education coordinating board and the state's four-year higher education institutions. The appointment of

subcommittees to develop portions of the state-wide plan shall not relinquish the committee's responsibility for assuring overall coordination, integration, and consistency of the state-wide plan.

In establishing and implementing the state-wide health personnel resource plan the committee shall, to the extent possible, utilize existing data and information, personnel, equipment, and facilities and shall minimize travel and take such other steps necessary to reduce the administrative costs associated with the preparation and implementation of the plan.

(2) The state-wide health resource plan shall include at least the following:

(a)(i) Identification of the type, number, and location of the health care professional work force necessary to meet health care needs of the state.

(ii) A description and analysis of the composition and numbers of the potential work force available for meeting health care service needs of the population to be used for recruitment purposes. This should include a description of the data, methodology, and process used to make such determinations.

(b) A centralized inventory of the numbers of student applications to higher education and vocational-technical training and education programs, yearly enrollments, yearly degrees awarded, and numbers on waiting lists for all the state's publicly funded health care training and education programs. The committee shall request similar information for incorporation into the inventory from private higher education and vocational-technical training and education programs.

(c) A description of state-wide and local specialized provider training needs to meet the health care needs of target populations and a plan to meet such needs in a cost-effective and accessible manner.

(d) A description of how innovative, cost-effective technologies such as telecommunications can and will be used to provide higher education, vocational-technical, continued competency, and skill maintenance and enhancement education and training to placebound students who need flexible programs and who are unable to attend institutions for training.

(e) A strategy for assuring higher education and vocational-technical educational and training programming is sensitive to the changing work force such as reentry workers, women, minorities, and the disabled.

(f) Strategies to increase the number of persons of color in the health professions. Such strategies shall incorporate, to the extent possible, federal and state assistance programs for health career development, including those for American Indians, economically disadvantaged persons, physically challenged persons, and persons of color.

(g) A strategy and coordinated state-wide policy developed by the subcommittees authorized in subsection (1) of this section for increasing the number of graduates intending to serve in shortage areas after graduation, including such strategies as the establishment of preferential admissions and designated enrollment slots.

(h) Guidelines and policies developed by the subcommittees authorized in subsection (1) of this section for allowing academic credit for on-the-job experience such as internships, volunteer experience, apprenticeships, and community service programs.

(i) A strategy developed by the subcommittees authorized in subsection (1) of this section for making required internships and residency programs available that are geographically accessible and sufficiently diverse to meet both general and specialized training needs as identified in the plan when such programs are required.

(j) A description of the need for multiskilled health care professionals and an implementation plan to restructure educational and training programming to meet these needs.

(k) An analysis of the types and estimated numbers of health care personnel that will need to be recruited from out-of-state to meet the health professional needs not met by in-state trained personnel.

(l) An analysis of the need for educational articulation within the various health care disciplines and a plan for addressing the need.

(m) An analysis of the training needs of those members of the long-term care profession that are not regulated and that have no formal training requirements. Programs to meet these needs should be developed in a cost-effective and a state-wide accessible manner that provide for the basic training needs of these individuals.

(n) A designation of the professions and geographic locations in which loan repayment and scholarships should be available based upon objective data-based forecasts of health professional shortages. A description of the criteria used to select professions and geographic locations shall be included. Designations of professions and geographic locations may be amended by the department of health when circumstances warrant as provided for in RCW 28B.115.070.

(o) A description of needed changes in regulatory laws governing the credentialing of health professionals.

(p) A description of linguistic and cultural training needs of foreign-trained health care professionals to assure safe and effective practice of their health care profession.

(q) A plan to implement the recommendations of the state-wide nursing plan authorized by RCW 74.39.040.

(r) A description of criteria and standards that institutional plans provided for in this section must address in order to meet the requirements of the state-wide health personnel resource plan, including funding requirements to implement the plans. The committee shall also when practical identify specific outcome measures to measure progress in meeting the requirements of this plan. The criteria and standards shall be established in a manner as to provide flexibility to the institutions in meeting state-wide plan requirements. The committee shall establish required submission dates for the institutional plans that permit inclusion of funding requests into the institutions budget requests to the state.

(s) A description of how the higher education coordinating board, state board for community and technical colleges, superintendent of public instruction, department of health, and department of social and health services coordinated in the creation and implementation of the state plan including the areas of responsibility each agency shall assume. The plan should also include a description of the steps taken to assure participation by the groups that are to be consulted with.

(t) A description of the estimated fiscal requirements for implementation of the state-wide health resource plan that include a description of cost saving activities that reduce potential costs by avoiding administrative duplication, coordinating programming activities, and other such actions to control costs.

(3) The committee may call upon other agencies of the state to provide available information to assist the committee in meeting the responsibilities under this chapter. This information shall be supplied as promptly as circumstances permit.

(4) State agencies involved in the development and implementation of the plan shall to the extent possible utilize existing personnel and financial resources in the development and implementation of the state-wide health personnel resource plan.

~~(5) (The state-wide health personnel resource plan shall be submitted to the governor by July 1, 1992, and updated by July 1 of each even-numbered year. The governor, no later than December 1 of that year, shall approve, approve with modifications, or disapprove the state-wide health resource plan.~~

~~—(6) The approved state-wide health resource plan shall be submitted to the senate and house of representatives committees on health care, higher education, and ways and means or appropriations by December 1 of each even-numbered year.~~

~~—(7)) Implementation of the state-wide plan shall begin by July 1, 1993.~~

~~((8) Notwithstanding subsections (5) and (7) of this section, the committee shall prepare and submit to the higher education coordinating board by June 1, 1992, the analysis necessary for the initial implementation of the health professional loan repayment and scholarship program created in chapter 28B.115 RCW.~~

~~—(9))~~ (6) Each publicly funded two-year and four-year institute of higher education authorized under Title 28B RCW and vocational-technical institution authorized under Title 28A RCW that offers health training and education programs shall biennially prepare and submit an institutional plan to the committee. The institutional plan shall identify specific programming and activities of the institution that meet the requirements of the state-wide health professional resource plan.

The committee shall review and assess whether the institutional plans meet the requirements of the state-wide health personnel resource plan and shall prepare a report with its determination. The report shall become part of the institutional plan and shall be submitted to the governor and the legislature.

The institutional plan shall be included with the institution's biennial budget submission. The institution's budget shall identify proposed spending to meet the requirements of the institutional plan. Each vocational-technical institution, college, or university shall be responsible for implementing its institutional plan.

Sec. 16. RCW 28B.20.130 and 1985 c 370 s 92 are each amended to read as follows:

General powers and duties of the board of regents are as follows:

(1) To have full control of the university and its property of various kinds, except as otherwise provided by law.

(2) To employ the president of the university, his or her assistants, members of the faculty, and employees of the institution, who except as otherwise provided by law, shall hold their positions during the pleasure of said board of regents.

(3) Establish entrance requirements for students seeking admission to the university which meet or exceed the standards specified under RCW 28B.80.350(2). Completion of examinations satisfactory to the university may be a prerequisite for entrance by any applicant at the university's discretion. Evidence of completion of public high schools and other educational institutions whose courses of study meet the approval of the university may be acceptable for entrance.

(4) Establish such colleges, schools, or departments necessary to carry out the purpose of the university and not otherwise proscribed by law.

(5) With the assistance of the faculty of the university, prescribe the course of study in the various colleges, schools, and departments of the institution and publish the necessary catalogues thereof.

(6) Grant to students such certificates or degrees as recommended for such students by the faculty. The board, upon recommendation of the faculty, may also confer honorary degrees upon persons other than graduates of this university in recognition of their learning or devotion to literature, art, or science: PROVIDED, That no degree shall ever be conferred in consideration of the payment of money or the giving of property of whatsoever kind.

(7) Accept such gifts, grants, conveyances, bequests, and devises, whether real or personal property, or both, in trust or otherwise, for the use or benefit of the university, its colleges, schools, departments, or agencies; and sell, lease or exchange, invest or expend the same or the proceeds, rents, profits, and income thereof except as limited by the terms of said gifts, grants, conveyances, bequests, and devises. The board shall adopt proper rules to govern and protect the receipt and expenditure of the proceeds of all fees, and the proceeds, rents, profits, and income of all gifts, grants, conveyances, bequests, and devises above-mentioned(~~(, and shall make full report of the same in the customary biennial report to the governor and members of the legislature, or more frequently if required by law: PROVIDED, HOWEVER, That nothing herein contained shall be construed to repeal, amend or in any way modify any of the provisions of RCW 28B.20.380).~~)).

(8) Except as otherwise provided by law, to enter into such contracts as the regents deem essential to university purposes.

(9) To submit upon request such reports as will be helpful to the governor and to the legislature in providing for the institution.

(10) Subject to the approval of the higher education coordinating board pursuant to RCW 28B.80.340, offer new degree programs, offer off-campus programs, participate in consortia or centers, contract for off-campus educational programs, and purchase or lease major off-campus facilities.

**Sec. 17.** RCW 28B.20.382 and 1996 c 288 s 27 are each amended to read as follows:

Until authorized and empowered to do so by statute of the legislature, the board of regents of the university, with respect to that certain tract of land in the city of Seattle originally known as the "old university grounds" and more recently known as the "metropolitan tract" and any land contiguous thereto, shall not sell the land or any part thereof or any improvement thereon, or lease the land or any part thereof or any improvement thereon or renew or extend any lease thereof for a term ending more than sixty years beyond midnight, December 31, 1980. Any sale of the land or any part thereof or any improvement thereon, or any lease or renewal or extension of any lease of the land or any part thereof or any improvement thereon for a term ending more than sixty years after midnight, December 31, 1980, made or attempted to be made by the board of regents shall be null and void unless and until the same has been approved or ratified and confirmed by legislative act.

The board of regents shall have power from time to time to lease the land, or any part thereof or any improvement thereon for a term ending not more than sixty years beyond midnight, December 31, 1980: ~~((PROVIDED, That the board of regents shall make a full, detailed report of all leases and transactions pertaining to the land or any part thereof or any improvement thereon to the joint legislative audit and review committee, including one copy to the staff of the committee, during an odd-numbered year.))~~ PROVIDED ((FURTHER)), That any and all records, books, accounts, and agreements of any lessee or sublessee under this section, pertaining to compliance with the terms and conditions of such lease or sublease, shall be open to inspection by the board of regents, the ways and means committee of the senate, the appropriations committee of the house of representatives, and the joint legislative audit and review committee or any successor committees. It is not intended by this proviso that unrelated records, books, accounts, and agreements of lessees, sublessees, or related companies be open to such inspection.

**Sec. 18.** RCW 28B.25.020 and 1996 c 110 s 1 are each amended to read as follows:

(1) The joint center shall have authority over all fiscal activities related to the land and facilities known as the Riverpoint higher education park subject to the

approval of the higher education coordinating board pursuant to RCW 28B.80.330 through 28B.80.350.

(2) The joint center for higher education shall coordinate all baccalaureate and graduate degree programs, and all other courses and programs offered in the Spokane area by Washington State University and by Eastern Washington University outside of its Cheney campus. The joint center for higher education shall not coordinate the intercollegiate center for nursing. The joint center for higher education may mediate disagreements among institutions about degree programs or courses.

(3) The joint center for higher education shall coordinate the following higher education activities in the Spokane area outside of the Eastern Washington University Cheney campus:

(a) Articulation between lower division and upper division programs;

(b) The participation of Washington State University and Eastern Washington University in joint academic degree programs with Gonzaga University and Whitworth College and in joint academic degree programs with each other;

(c) All contractual negotiations between public and independent colleges and universities; and

(d) Programs offered through the intercollegiate research and technology institute created by RCW 28B.10.060.

(4) The participating institutions in the joint center for higher education shall maintain jurisdiction over the content of the course offerings and the entitlement to degrees. However, before any degree program is authorized under this section, it shall be subject to review and approval of the higher education coordinating board.

(5) The joint center shall develop a master plan for the Riverpoint higher education park. The plan shall be developed in cooperation with the participating institutions ~~((and submitted to the higher education coordinating board, legislature, and office of financial management))~~.

(6) The joint center shall adopt rules as necessary to implement this chapter.

(7) Title to or all interest in real estate and other assets, including but not limited to assignable contracts, cash, equipment, buildings, facilities, and appurtenances thereto held as of July 1, 1991, shall vest in the joint center for higher education.

**Sec. 19.** RCW 28B.30.150 and 1985 c 370 s 93 are each amended to read as follows:

The regents of Washington State University, in addition to other duties prescribed by law, shall:

(1) Have full control of the university and its property of various kinds, except as otherwise provided by law.

(2) Employ the president of the university, his or her assistants, members of the faculty, and employees of the university, who, except as otherwise provided by law, shall hold their positions during the pleasure of said board of regents.

(3) Establish entrance requirements for students seeking admission to the university which meet or exceed the standards specified under RCW 28B.80.350(2). Completion of examinations satisfactory to the university may be a prerequisite for entrance by any applicant, at the university's discretion. Evidence of completion of public high schools and other educational institutions whose courses of study meet the approval of the university may be acceptable for entrance.

(4) Establish such colleges, schools, or departments necessary to carry out the purpose of the university and not otherwise proscribed by law.

(5) Subject to the approval of the higher education coordinating board pursuant to RCW 28B.80.340, offer new degree programs, offer off-campus programs, participate in consortia or centers, contract for off-campus educational programs, and purchase or lease major off-campus facilities.

(6) With the assistance of the faculty of the university, prescribe the courses of instruction in the various colleges, schools, and departments of the institution and publish the necessary catalogues thereof.

(7) Collect such information as the board deems desirable as to the schemes of technical instruction adopted in other parts of the United States and foreign countries.

(8) Provide for holding agricultural institutes including farm marketing forums.

(9) Provide that instruction given in the university, as far as practicable, be conveyed by means of laboratory work and provide in connection with the university one or more physical, chemical, and biological laboratories, and suitably furnish and equip the same.

(10) Provide training in military tactics for those students electing to participate therein.

(11) Establish a department of elementary science and in connection therewith provide instruction in elementary mathematics, including elementary trigonometry, elementary mechanics, elementary and mechanical drawing, and land surveying.

(12) Establish a department of agriculture and in connection therewith provide instruction in physics with special application of its principles to agriculture, chemistry with special application of its principles to agriculture, morphology and physiology of plants with special reference to common grown crops and fungus enemies, morphology and physiology of the lower forms of animal life, with special reference to insect pests, morphology and physiology of the higher forms of animal life and in particular of the horse, cow, sheep, and swine, agriculture with special reference to the breeding and feeding of livestock and the best mode of cultivation of farm produce, and mining and metallurgy, appointing demonstrators in each of these subjects to superintend the equipment of a laboratory and to give practical instruction therein.



(13) Establish agricultural experiment stations in connection with the department of agriculture, including at least one in the western portion of the state, and appoint the officers and prescribe regulations for their management.

(14) Grant to students such certificates or degrees, as recommended for such students by the faculty.

(15) Confer honorary degrees upon persons other than graduates of the university in recognition of their learning or devotion to literature, art, or science when recommended thereto by the faculty: PROVIDED, That no degree shall ever be conferred in consideration of the payment of money or the giving of property of whatsoever kind.

(16) Adopt plans and specifications for university buildings and facilities or improvements thereto and employ skilled architects and engineers to prepare such plans and specifications and supervise the construction of buildings or facilities which the board is authorized to erect, and fix the compensation for such services. The board shall enter into contracts with one or more contractors for such suitable buildings, facilities, or improvements as the available funds will warrant, upon the most advantageous terms offered at a public competitive letting, pursuant to public notice under ~~((regulations))~~ rules established by the board. The board shall require of all persons with whom they contract for construction and improvements a good and sufficient bond for the faithful performance of the work and full protection against all liens.

(17) Except as otherwise provided by law, direct the disposition of all money appropriated to or belonging to the state university.

(18) Receive and expend the money appropriated under the act of congress approved May 8, 1914, entitled "An Act to provide for cooperative agricultural extension work between the agricultural colleges in the several States receiving the benefits of the Act of Congress approved July 2, 1862, and Acts supplemental thereto and the United States Department of Agriculture" and organize and conduct agricultural extension work in connection with the state university in accordance with the terms and conditions expressed in the acts of congress.

(19) Except as otherwise provided by law, to enter into such contracts as the regents deem essential to university purposes.

(20) Acquire by lease, gift, or otherwise, lands necessary to further the work of the university or for experimental or demonstrational purposes.

(21) Establish and maintain at least one agricultural experiment station in an irrigation district to conduct investigational work upon the principles and practices of irrigational agriculture including the utilization of water and its relation to soil types, crops, climatic conditions, ditch and drain construction, fertility investigations, plant disease, insect pests, marketing, farm management, utilization of fruit byproducts, and general development of agriculture under irrigation conditions.

(22) Supervise and control the agricultural experiment station at Puyallup.

(23) Establish and maintain at Wenatchee an agricultural experiment substation for the purpose of conducting investigational work upon the principles

and practices of orchard culture, spraying, fertilization, pollenization, new fruit varieties, fruit diseases and pests, byproducts, marketing, management, and general horticultural problems.

(24) Accept such gifts, grants, conveyances, devises, and bequests, whether real or personal property, in trust or otherwise, for the use or benefit of the university, its colleges, schools, or departments; and sell, lease or exchange, invest or expend the same or the proceeds, rents, profits, and income thereof except as limited by the terms of said gifts, grants, conveyances, bequests, and devises; and adopt proper rules to govern and protect the receipt and expenditure of the proceeds of all fees, and the proceeds, rents, profits, and income of all gifts, grants, conveyances, bequests, and devises(~~(, and make full report thereof in a biennial report to the governor and members of the legislature)).~~

(25) Construct when the board so determines a new foundry and a mining, physical, technological building, and fabrication shop at the university, or add to the present foundry and other buildings, in order that both instruction and research be expanded to include permanent molding and die casting with a section for new fabricating techniques, especially for light metals, including magnesium and aluminum; purchase equipment for the shops and laboratories in mechanical, electrical, and civil engineering; establish a pilot plant for the extraction of alumina from native clays and other possible light metal research; purchase equipment for a research laboratory for technological research generally; and purchase equipment for research in electronics, instrumentation, energy sources, plastics, food technology, mechanics of materials, hydraulics, and similar fields.

(26) Make and transmit to the governor and members of the legislature upon request such reports as will be helpful in providing for the institution.

Sec. 20. RCW 28B.30.537 and 1995 c 399 s 28 are each amended to read as follows:

The IMPACT center shall:

(1) Coordinate the teaching, research, and extension expertise of the college of agriculture and home economics at Washington State University to assist in:

(a) The design and development of information and strategies to expand the long-term international markets for Washington agricultural products; and

(b) The dissemination of such information and strategies to Washington exporters, overseas users, and public and private trade organizations;

(2) Research and identify current impediments to increased exports of Washington agricultural products, and determine methods of surmounting those impediments and opportunities for exporting new agricultural products and commodities to foreign markets;

(3) Prepare curricula to present and distribute information concerning international trade in agricultural commodities and products to students, exporters, international traders, and the public;

(4) Provide high-quality research and graduate education and professional nondegree training in international trade in agricultural commodities in cooperation with other existing programs;

(5) Ensure that activities of the center adequately reflect the objectives for the state's agricultural market development programs established by the department of agriculture as the lead state agency for such programs under chapter 43.23 RCW; and

(6) Link itself through cooperative agreements with the center for international trade in forest products at the University of Washington, the state department of agriculture, the department of community, trade, and economic development, Washington's agriculture businesses and associations, and other state agency data collection, processing, and dissemination efforts(~~;~~ and

~~(7) Subject to RCW 40.07.040, report biennially to the governor and the legislature on the IMPACT center, state agricultural commodities marketing programs, and the center's success in obtaining nonstate funding for its operation)).~~

**Sec. 21.** RCW 28B.50.259 and 1993 sp.s. c 18 s 32 are each amended to read as follows:

(1) The state board for community and technical colleges shall administer a program designed to provide higher education opportunities to dislocated forest products workers and their unemployed spouses who are enrolled in a community or technical college for ten or more credit hours per quarter. In administering the program, the college board shall have the following powers and duties:

(a) With the assistance of an advisory committee, design a procedure for selecting dislocated forest products workers to participate in the program;

(b) Allocate funding to community and technical colleges attended by participants; and

(c) Monitor the program and report on participants' progress and outcomes(~~;~~ and

~~(d) Report to the legislature by December 1, 1993, on the status of the program)).~~

(2) Unemployed spouses of eligible dislocated forest products workers may participate in the program, but tuition and fees may be waived under the program only for the worker or the spouse and not both.

(3) Subject to the limitations of RCW 28B.15.910, the governing boards of the community and technical colleges may waive all or a portion of tuition and fees for program participants, for a maximum of six quarters within a two-year period.

(4) During any biennium, the number of full-time equivalent students to be served in this program shall be determined by the applicable omnibus appropriations act, and shall be in addition to the community college enrollment level funded by the applicable omnibus appropriations act.

**Sec. 22.** RCW 28B.65.050 and 1995 c 399 s 30 are each amended to read as follows:

(1) The board shall oversee, coordinate, and evaluate the high-technology programs.

(2) The board shall:

(a) Determine the specific high-technology occupational fields in which technical training is needed and advise the institutions of higher education and the higher education coordinating board on their findings;

(b) Identify economic areas and high-technology industries in need of technical training and research and development critical to economic development and advise the institutions of higher education and the higher education coordinating board on their findings;

(c) Oversee and coordinate the Washington high-technology education and training program to ~~((insure))~~ ensure high standards, efficiency, and effectiveness;

(d) Work cooperatively with the superintendent of public instruction to identify the skills prerequisite to the high-technology programs in the institutions of higher education;

(e) Work cooperatively with and provide any information or advice which may be requested by the higher education coordinating board during the board's review of new baccalaureate degree program proposals which are submitted under this chapter. Nothing in this chapter shall be construed as altering or superseding the powers or prerogatives of the higher education coordinating board over the review of new degree programs as established in section 6(2) of this 1985 act;

(f) Work cooperatively with the department of community, trade, and economic development to identify the high-technology education and training needs of existing Washington businesses and businesses with the potential to locate in Washington;

(g) Work towards increasing private sector participation and contributions in Washington high-technology programs;

(b) Identify and evaluate the effectiveness of state sponsored research related to high technology; and

(i) Establish and maintain a plan, including priorities, to guide high-technology program development in public institutions of higher education, which plan shall include an assessment of current high-technology programs, steps to increase existing programs, new initiatives and programs necessary to promote high technology, and methods to coordinate and target high-technology programs to changing market opportunities in business and industry(~~;~~ and

~~—(j) Prepare and submit to the legislature before the first day of each regular session an annual report on Washington high-technology programs including, but not limited to:~~

~~—(i) An evaluation of each program;~~

~~—(ii) A determination of the feasibility of expanding the program; and~~

~~—(iii) Recommendations, including recommendations for further legislation as the board deems necessary)).~~

(3) The board may adopt rules under chapter 34.05 RCW as it deems necessary to carry out the purposes of this chapter.

(4) The board shall cease to exist on June 30, 1987, unless extended by law for an additional fixed period of time.

Sec. 23. RCW 28B.80.280 and 1985 c 370 s 27 are each amended to read as follows:

The board shall, in cooperation with the state institutions of higher education and the state board for community and technical colleges ((education)), establish and maintain a state-wide transfer of credit policy and agreement. The policy and agreement shall, where feasible, include course and program descriptions consistent with state-wide interinstitutional guidelines. The institutions of higher education shall provide support and staff resources as necessary to assist in developing and maintaining this policy and agreement. The state-wide transfer of credit policy and agreement shall be effective beginning with the 1985-86 academic year. ~~((The board shall report on developments toward that objective at the 1987 regular session of the legislature.))~~

Sec. 24. RCW 28B.80.360 and 1995 1st sp.s. c 9 s 12 are each amended to read as follows:

The board shall perform the following administrative responsibilities:

(1) Administer the programs set forth in the following statutes: RCW 28A.600.100 through 28A.600.150 (Washington scholars); chapter 28B.04 RCW (displaced homemakers); chapter 28B.85 RCW (degree-granting institutions); RCW 28B.10.210 through 28B.10.220 (blind students subsidy); RCW 28B.10.800 through 28B.10.824 (student financial aid program); chapter 28B.12 RCW (work study); RCW 28B.15.067 (establishing tuition and fees); RCW 28B.15.543 (tuition waivers for Washington scholars); RCW 28B.15.760 through 28B.15.766 (math and science loans); RCW 28B.80.150 through 28B.80.170 (student exchange compact); RCW 28B.80.240 (student aid programs); and RCW 28B.80.210 (federal programs).

(2) Study the delegation of the administration of the following: RCW 28B.65.040 through 28B.65.060 (high-technology board); chapter 28B.85 RCW (degree-granting institutions); RCW 28B.80.150 through 28B.80.170 (student exchange compact programs); RCW 28B.80.200 (state commission for federal law purposes); RCW 28B.80.210 (enumerated federal programs); RCW 28B.80.230 (receipt of federal funds); RCW 28B.80.240 (student financial aid programs); RCW 28A.600.120 through 28A.600.150 (Washington scholars); RCW 28B.15.543 (Washington scholars); RCW 28B.04.020 through 28B.04.110 (displaced homemakers); RCW 28B.10.215 and 28B.10.220 (blind students); RCW 28B.10.790, 28B.10.792, and 28B.10.802 through 28B.10.844 (student financial aid); RCW 28B.12.040 through 28B.12.070 (student work study); RCW 28B.15.100 (reciprocity agreement); RCW 28B.15.730 through 28B.15.736 (Oregon reciprocity); RCW 28B.15.750 through 28B.15.754 (Idaho reciprocity); RCW 28B.15.756 and 28B.15.758 (British Columbia reciprocity); and RCW 28B.15.760 through 28B.15.764 (math/science loans). ~~((The board shall report the results of its study and recommendations to the legislature.))~~

Sec. 25. RCW 28B.80.612 and 1993 c 363 s 3 are each amended to read as follows:

In cooperation with institutions of higher education, the state board for community and technical colleges, and appropriate state and local agencies, the higher education coordinating board may identify methods to reduce administrative barriers to efficient institutional operations. These methods may include waivers of statutory requirements and administrative rules. ~~((The higher education coordinating board shall report to the governor and appropriate legislative committees its recommendations for any statutory changes necessary to enhance institutional efficiencies.))~~ In cooperation with affected institutions, the board shall work with appropriate agencies to reduce administrative barriers that do not require statutory changes.

Sec. 26. RCW 29.04.200 and 1991 c 363 s 30 are each amended to read as follows:

(1) Beginning January 1, 1993, no voting device or machine may be used in a county with a population of seventy thousand or more to conduct a primary or general or special election in this state unless it correctly records on a separate ballot the votes cast by each elector for any person and for or against any measure and such separate ballots are available for audit purposes after such a primary or election.

(2) Beginning January 1, 1993, the secretary of state shall not certify under this title any voting device or machine for use in conducting a primary or general or special election in this state unless the device or machine correctly records on a separate ballot the votes cast by each elector for any person and for or against any measure and such separate ballots are available for audit purposes after such a primary or election.

(3) Beginning January 1, 1993, a county with a population of less than seventy thousand may use a voting machine or device for conducting a primary or general or special election which does not record on a separate ballot, available for audit purposes after the primary or election, the votes cast by each elector for any person and for or against any measure if:

(a) The device was certified under this title before January 1, 1993, for use in this state;

(b) The device otherwise satisfies the requirements of this title; and

(c) Not more than twenty percent of the votes cast during any primary or general or special election conducted after January 1, 1998, in the county are cast using such a machine or device.

(4) The purpose of subsection (3) of this section is to permit less populous counties to replace voting equipment in stages over several years. These less populous counties are, nonetheless, encouraged to secure as expeditiously as possible voting equipment which would satisfy the requirements of subsection (1) of this section established for more populous counties. ~~((The secretary of state shall report to the legislature by January 1st of each odd-numbered year through 1997 on the progress of such less populous counties in replacing equipment which does not satisfy the requirements of subsection (1) of this section established for more populous counties.))~~

**Sec. 27.** RCW 36.32.340 and 1963 c 4 s 36.32.340 are each amended to read as follows:

The county commissioners shall take such action as is necessary to effect coordination of their administrative programs ~~(;)~~ **and** prepare reports annually on the operations of all departments under their jurisdiction ~~(; and submit biennially to the governor and the legislature their joint recommendations on procedural changes which would increase the efficiency of any department))~~.

**Sec. 28.** RCW 36.47.020 and 1969 ex.s. c 5 s 1 are each amended to read as follows:

It shall be the duty of the assessor, auditor, clerk, coroner, sheriff, superintendent of schools, treasurer, and prosecuting attorney of each county in the state, including appointive officials in charter counties heading like departments, to take such action as they jointly deem necessary to effect the coordination of the administrative programs of each county ~~((and to submit to the governor and the legislature biennially a joint report or joint reports containing recommendations for procedural changes which would increase the efficiency of the respective departments headed by such county officials))~~.

**Sec. 29.** RCW 36.47.070 and 1977 ex.s. c 221 s 2 are each amended to read as follows:

It is the desire of the legislature that the Washington State Association of County Officials, as set forth in chapter 36.47 RCW and the Washington State Association of Counties, as set forth in RCW 36.32.350, shall merge into one association of elected county officers. Only one association shall carry out the duties imposed by RCW 36.32.335 through 36.32.360 and 36.47.020 through 36.47.060.

~~((The two organizations shall report to the legislature by January 1, 1978 on the details of this merger.))~~

**Sec. 30.** RCW 36.70A.385 and 1995 c 399 s 43 are each amended to read as follows:

(1) The legislature intends to determine whether the environmental review process mandated under chapter 43.21C RCW may be enhanced and simplified, and coordination improved, when applied to comprehensive plans mandated by this chapter. The department shall undertake pilot projects on environmental review to determine if the review process can be improved by fostering more coordination and eliminating duplicative environmental analysis which is made to assist decision makers approving comprehensive plans pursuant to this chapter. Such pilot projects should be designed and scoped to consider cumulative impacts resulting from plan decisions, plan impacts on environmental quality, impacts on adjacent jurisdictions, and similar factors in sufficient depth to simplify the analysis of subsequent specific projects being carried out pursuant to the approved plan.

(2) The legislature hereby authorizes the department to establish, in cooperation with business, industry, cities, counties, and other interested parties,

at least two but not more than four pilot projects, one of which shall be with a county, on enhanced draft and final nonproject environmental analysis of comprehensive plans prepared pursuant to this chapter, for the purposes outlined in subsection (1) of this section. The department may select appropriate geographic subareas within a comprehensive plan if that will best serve the purposes of this section and meet the requirements of chapter 43.21C RCW.

(3) An enhanced draft and final nonproject environmental analysis prepared pursuant to this section shall follow the rules adopted pursuant to chapter 43.21C RCW.

(4) Not later than December 31, 1993, the department shall evaluate the overall effectiveness of the pilot projects under this section regarding preparing enhanced nonproject environmental analysis for the approval process of comprehensive plans and shall:

(a) Provide an interim report of its findings to the legislature with such recommendations as may be appropriate, including the need, if any, for further legislation;

(b) Consider adoption of any further rules or guidelines as may be appropriate to assist counties and cities in meeting requirements of chapter 43.21C RCW when considering comprehensive plans; and

(c) Prepare and circulate to counties and cities such instructional manuals or other information derived from the pilot projects as will assist all counties and cities in meeting the requirements and objectives of chapter 43.21C RCW in the most expeditious and efficient manner in the process of considering comprehensive plans pursuant to this chapter.

~~((5) The department shall submit a final report to the legislature no later than December 31, 1995.))~~

**Sec. 31.** RCW 36.79.060 and 1997 c 81 s 5 are each amended to read as follows:

The board shall:

(1) Adopt rules necessary to implement the provisions of this chapter relating to the allocation of funds in the rural arterial trust account to counties;

(2) Adopt reasonably uniform design standards for county rural arterials and collectors that meet the requirements for trucks transporting commodities(~~;~~

~~—(3) Report biennially on the first day of November of the even-numbered years to the legislative transportation committee and the house and senate transportation committees regarding the progress of counties in developing plans for their rural arterial and collector construction programs and the construction of replacement bridges funded by the federal bridge replacement program on access roads in rural areas and the allocation of rural arterial trust funds to the counties)).~~

**Sec. 32.** RCW 38.52.535 and 1995 c 243 s 10 are each amended to read as follows:

The state enhanced 911 coordination office and the enhanced 911 advisory committee may participate in efforts to set uniform national standards for



automatic number identification and automatic location identification data transmission for private telecommunications systems and private shared telecommunications services. ~~((The enhanced 911 advisory committee shall report to the legislature by January 1, 1997, the progress of such standards development and shall make recommendations on steps to be taken if such standards have not been adopted.))~~

**Sec. 33.** RCW 39.29.068 and 1993 c 433 s 8 are each amended to read as follows:

The office of financial management shall maintain a publicly available list of all personal service contracts entered into by state agencies during each fiscal year. The list shall identify the contracting agency, the contractor, the purpose of the contract, effective dates and periods of performance, the cost of the contract and funding source, any modifications to the contract, and whether the contract was competitively procured or awarded on a sole source basis. The office of financial management shall also ensure that state accounting definitions and procedures are consistent with RCW 39.29.006 and permit the reporting of personal services expenditures by agency and by type of service. Designations of type of services shall include, but not be limited to, management and organizational services, legal and expert witness services, financial services, computer and information services, social or technical research, marketing, communications, and employee training or recruiting services. ~~((The office of financial management shall report annually to the fiscal committees of the senate and house of representatives on sole source contracts filed under this chapter. The report shall describe: (1) The number and aggregate value of contracts for each category established in this section; (2) the number and aggregate value of contracts of two thousand five hundred dollars or greater but less than ten thousand dollars; (3) the number and aggregate value of contracts of ten thousand dollars or greater; (4) the justification provided by agencies for the use of sole source contracts; and (5) any trends in the use of sole source contracts.))~~

**Sec. 34.** RCW 39.84.090 and 1995 c 399 s 56 are each amended to read as follows:

(1) Prior to issuance of any revenue bonds, each public corporation shall submit a copy of its enabling ordinance and charter, a description of any industrial development facility proposed to be undertaken, and the basis for its qualification as an industrial development facility to the department of community, trade, and economic development.

(2) If the industrial development facility is not eligible under this chapter, the department of community, trade, and economic development shall give notice to the public corporation, in writing and by certified mail, within twelve working days of receipt of the description.

(3) ~~((The department of trade and economic development shall report annually through 1989 to the chairs of the committees on ways and means of the senate and house of representatives, including one copy to the staff of each of the~~

~~committees, and to the governor on the amount of capital investment undertaken under this chapter and the amount of permanent employment reasonably related to the existence of such industrial development facilities.~~

~~—(4))~~ The department of community, trade, and economic development shall provide such advice and assistance to public corporations and municipalities which have created or may wish to create public corporations as the public corporations or municipalities request and the department of community, trade, and economic development considers appropriate.

Sec. 35. RCW 39.96.070 and 1995 c 192 s 2 are each amended to read as follows:

(1) Except as provided in subsection (3) of this section, no governmental entity may enter a payment agreement under RCW 39.96.030 after June 30, 2000.

(2) The termination of authority to enter payment agreements after June 30, 2000, shall not affect the validity of any payment agreements or other contracts entered into under RCW 39.96.030 on or before that date.

(3) A governmental entity may enter into a payment agreement under and in accordance with this chapter after June 30, 2000, to replace a payment agreement that relates to specified obligations issued on or before that date and that has terminated before the final term of those obligations.

~~((4) The state finance committee shall make a report to the appropriate legislative committees on payment agreements authorized in this chapter. The report shall include the governmental entity entering into a payment agreement, the amount of the agreement, the expected savings resulting from the agreement, the transactions cost, and any other information the state finance committee determines relevant. The report shall be submitted each December.))~~

Sec. 36. RCW 41.04.630 and 1987 c 475 s 7 are each amended to read as follows:

(1) The committee shall keep or cause to be kept full and adequate accounts and records of the assets, obligations, transactions, and affairs of a salary reduction plan created under RCW 41.04.615.

(2) The committee shall file an annual report of the financial condition, transactions, and affairs of the salary reduction plan under the committee's jurisdiction. ~~((A copy of the annual report shall be filed with the speaker of the house of representatives, the president of the senate, the governor, and the state auditor.))~~

(3) Members of the committee shall be deemed to stand in a fiduciary relationship to the employees participating in the salary reduction plan and shall discharge their duties in good faith and with that diligence, care, and skill which ordinary prudent persons would exercise under similar circumstances in like positions.

Sec. 37. RCW 41.05.190 and 1993 c 492 s 221 are each amended to read as follows:

The administrator, in consultation with the public employees' benefits board, shall design a self-insured medicare supplemental insurance plan for retired and disabled employees eligible for medicare. For the purpose of determining the appropriate scope of the self-funded medicare supplemental plan, the administrator shall consider the differences in the scope of health services available under the uniform benefits package and the medicare program. ~~((The proposed plan shall be submitted to appropriate committees of the legislature by December 1, 1993.))~~

**Sec. 38.** RCW 41.05.220 and 1993 c 492 s 232 are each amended to read as follows:

(1) State general funds appropriated to the department of health for the purposes of funding community health centers to provide primary health and dental care services, migrant health services, and maternity health care services shall be transferred to the state health care authority. Any related administrative funds expended by the department of health for this purpose shall also be transferred to the health care authority. The health care authority shall exclusively expend these funds through contracts with community health centers to provide primary health and dental care services, migrant health services, and maternity health care services. The administrator of the health care authority shall establish requirements necessary to assure community health centers provide quality health care services that are appropriate and effective and are delivered in a cost-efficient manner. The administrator shall further assure that community health centers have appropriate referral arrangements for acute care and medical specialty services not provided by the community health centers.

~~((To further the intent of chapter 492, Laws of 1993, the health care authority, in consultation with the department of health, shall evaluate the organization and operation of the federal and state-funded community health centers and other not-for-profit health care organizations and propose recommendations to the health services commission and the health policy committees of the legislature by November 30, 1994, that identify changes to permit community health centers and other not-for-profit health care organizations to form certified health plans or other innovative health care delivery arrangements that help ensure access to primary health care services consistent with the purposes of chapter 492, Laws of 1993.~~

~~—(3))~~ The authority, in consultation with the department of health, shall work with community and migrant health clinics and other providers of care to underserved populations, to ensure that the number of people of color and underserved people receiving access to managed care is expanded in proportion to need, based upon demographic data.

**Sec. 39.** RCW 41.05.280 and 1993 c 504 s 3 are each amended to read as follows:

The department of corrections shall consult with the state health care authority to identify how the department of corrections shall develop a working

plan to correspond to the health care reform measures that require all departments to place all state purchased health services in a community-rated, single risk pool under the direct administrative authority of the state purchasing agent by July 1, 1997. (~~The department of corrections shall report the findings to the chairs of the house of representatives health care committee and committee on corrections and the chairs of the senate committee on health and human services and the law and justice committee by December 12, 1993.~~)

**Sec. 40.** RCW 41.06.070 and 1996 c 319 s 3, 1996 c 288 s 33, and 1996 c 186 s 109 are each reenacted and amended to read as follows:

(1) The provisions of this chapter do not apply to:

(a) The members of the legislature or to any employee of, or position in, the legislative branch of the state government including members, officers, and employees of the legislative council, joint legislative audit and review committee, statute law committee, and any interim committee of the legislature;

(b) The justices of the supreme court, judges of the court of appeals, judges of the superior courts or of the inferior courts, or to any employee of, or position in the judicial branch of state government;

(c) Officers, academic personnel, and employees of technical colleges;

(d) The officers of the Washington state patrol;

(e) Elective officers of the state;

(f) The chief executive officer of each agency;

(g) In the departments of employment security and social and health services, the director and the director's confidential secretary; in all other departments, the executive head of which is an individual appointed by the governor, the director, his or her confidential secretary, and his or her statutory assistant directors;

(h) In the case of a multimember board, commission, or committee, whether the members thereof are elected, appointed by the governor or other authority, serve ex officio, or are otherwise chosen:

(i) All members of such boards, commissions, or committees;

(ii) If the members of the board, commission, or committee serve on a part-time basis and there is a statutory executive officer: The secretary of the board, commission, or committee; the chief executive officer of the board, commission, or committee; and the confidential secretary of the chief executive officer of the board, commission, or committee;

(iii) If the members of the board, commission, or committee serve on a full-time basis: The chief executive officer or administrative officer as designated by the board, commission, or committee; and a confidential secretary to the chair of the board, commission, or committee;

(iv) If all members of the board, commission, or committee serve ex officio: The chief executive officer; and the confidential secretary of such chief executive officer;

(i) The confidential secretaries and administrative assistants in the immediate offices of the elective officers of the state;

(j) Assistant attorneys general;

- (k) Commissioned and enlisted personnel in the military service of the state;
  - (l) Inmate, student, part-time, or temporary employees, and part-time professional consultants, as defined by the Washington personnel resources board;
  - (m) The public printer or to any employees of or positions in the state printing plant;
  - (n) Officers and employees of the Washington state fruit commission;
  - (o) Officers and employees of the Washington state apple advertising commission;
  - (p) Officers and employees of the Washington state dairy products commission;
  - (q) Officers and employees of the Washington tree fruit research commission;
  - (r) Officers and employees of the Washington state beef commission;
  - (s) Officers and employees of any commission formed under chapter 15.66 RCW;
  - (t) Officers and employees of the state wheat commission formed under chapter 15.63 RCW;
  - (u) Officers and employees of agricultural commissions formed under chapter 15.65 RCW;
  - (v) Officers and employees of the nonprofit corporation formed under chapter 67.40 RCW;
  - (w) Executive assistants for personnel administration and labor relations in all state agencies employing such executive assistants including but not limited to all departments, offices, commissions, committees, boards, or other bodies subject to the provisions of this chapter and this subsection shall prevail over any provision of law inconsistent herewith unless specific exception is made in such law;
  - (x) In each agency with fifty or more employees: Deputy agency heads, assistant directors or division directors, and not more than three principal policy assistants who report directly to the agency head or deputy agency heads;
  - (y) All employees of the marine employees' commission;
  - (z) Up to a total of five senior staff positions of the western library network under chapter 27.26 RCW responsible for formulating policy or for directing program management of a major administrative unit. This subsection (1)(z) shall expire on June 30, 1997;
  - (aa) Staff employed by the department of community, trade, and economic development to administer energy policy functions and manage energy site evaluation council activities under RCW 43.21F.045(2)(m);
  - (bb) Staff employed by Wasbington State University to administer energy education, applied research, and technology transfer programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5).
- (2) The following classifications, positions, and employees of institutions of higher education and related boards are hereby exempted from coverage of this chapter:

(a) Members of the governing board of each institution of higher education and related boards, all presidents, vice-presidents, and their confidential secretaries, administrative, and personal assistants; deans, directors, and chairs; academic personnel; and executive heads of major administrative or academic divisions employed by institutions of higher education; principal assistants to executive heads of major administrative or academic divisions; other managerial or professional employees in an institution or related board having substantial responsibility for directing or controlling program operations and accountable for allocation of resources and program results, or for the formulation of institutional policy, or for carrying out personnel administration or labor relations functions, legislative relations, public information, development, senior computer systems and network programming, or internal audits and investigations; and any employee of a community college district whose place of work is one which is physically located outside the state of Washington and who is employed pursuant to RCW 28B.50.092 and assigned to an educational program operating outside of the state of Washington;

(b) Student, part-time, or temporary employees, and part-time professional consultants, as defined by the Washington personnel resources board, employed by institutions of higher education and related boards;

(c) The governing board of each institution, and related boards, may also exempt from this chapter classifications involving research activities, counseling of students, extension or continuing education activities, graphic arts or publications activities requiring prescribed academic preparation or special training as determined by the board: PROVIDED, That no nonacademic employee engaged in office, clerical, maintenance, or food and trade services may be exempted by the board under this provision;

(d) Printing craft employees in the department of printing at the University of Washington.

(3) In addition to the exemptions specifically provided by this chapter, the Washington personnel resources board may provide for further exemptions pursuant to the following procedures. The governor or other appropriate elected official may submit requests for exemption to the Washington personnel resources board stating the reasons for requesting such exemptions. The Washington personnel resources board shall hold a public hearing, after proper notice, on requests submitted pursuant to this subsection. If the board determines that the position for which exemption is requested is one involving substantial responsibility for the formulation of basic agency or executive policy or one involving directing and controlling program operations of an agency or a major administrative division thereof, the Washington personnel resources board shall grant the request and such determination shall be final as to any decision made before July 1, 1993. The total number of additional exemptions permitted under this subsection shall not exceed one percent of the number of employees in the classified service not including employees of institutions of higher education and related boards for those agencies not directly under the authority of any elected

public official other than the governor, and shall not exceed a total of twenty-five for all agencies under the authority of elected public officials other than the governor. ~~((The Washington personnel resources board shall report to each regular session of the legislature during an odd-numbered year all exemptions granted under subsections (1)(w) and (x) and (2) of this section, together with the reasons for such exemptions.))~~

The salary and fringe benefits of all positions presently or hereafter exempted except for the chief executive officer of each agency, full-time members of boards and commissions, administrative assistants and confidential secretaries in the immediate office of an elected state official, and the personnel listed in subsections (1)(j) through (v), (y), (z), and (2) of this section, shall be determined by the Washington personnel resources board. However, beginning with changes proposed for the 1997-99 fiscal biennium, changes to the classification plan affecting exempt salaries must meet the same provisions for classified salary increases resulting from adjustments to the classification plan as outlined in RCW 41.06.152.

Any person holding a classified position subject to the provisions of this chapter shall, when and if such position is subsequently exempted from the application of this chapter, be afforded the following rights: If such person previously held permanent status in another classified position, such person shall have a right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

Any classified employee having civil service status in a classified position who accepts an appointment in an exempt position shall have the right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

A person occupying an exempt position who is terminated from the position for gross misconduct or malfeasance does not have the right of reversion to a classified position as provided for in this section.

**Sec. 41.** RCW 41.06.285 and 1993 c 379 s 308 are each amended to read as follows:

(1) There is hereby created a fund within the state treasury, designated as the "higher education personnel service fund," to be used by the board as a revolving fund for the payment of salaries, wages, and operations required for the administration of institutions of higher education and related boards, the budget for which shall be subject to review and approval and appropriation by the legislature. Subject to the requirements of subsection (2) of this section, an amount not to exceed one-half of one percent of the salaries and wages for all positions in the classified service shall be contributed from the operations appropriations of each institution and the state board for community and technical colleges and credited to the higher education personnel service fund as such allotments are approved pursuant to chapter 43.88 RCW. Subject to the above limitations, such amount shall be charged against the allotments pro rata, at a rate to be fixed by the director of financial management from time to time, which will

provide the board with funds to meet its anticipated expenditures during the allotment period.

(2) If employees of institutions of higher education cease to be classified under this chapter pursuant to an agreement authorized by RCW 41.56.201, each institution of higher education and the state board for community and technical colleges shall continue, for six months after the effective date of the agreement, to make contributions to the higher education personnel service fund based on employee salaries and wages that includes the employees under the agreement. At the expiration of the six-month period, the director of financial management shall make across-the-board reductions in allotments of the higher education personnel service fund for the remainder of the biennium so that the charge to the institutions of higher education and state board for community and technical colleges based on the salaries and wages of the remaining employees of institutions of higher education and related boards classified under this chapter does not increase during the biennium, unless an increase is authorized by the legislature. ~~((The director of financial management shall report the amount and impact of any across-the-board reductions made under this section to the appropriations committee of the house of representatives and the ways and means committee of the senate, or appropriate successor committees, within thirty days of making the reductions.))~~

(3) Moneys from the higher education personnel service fund shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the board.

**Sec. 42.** RCW 41.50.780 and 1995 c 239 s 315 are each amended to read as follows:

(1) The deferred compensation principal account is hereby created in the state treasury. Any deficiency in the deferred compensation administrative account caused by an excess of administrative expenses disbursed from that account over earnings of investments of balances credited to that account shall be eliminated by transferring moneys to that account from the deferred compensation principal account.

(2) The amount of compensation deferred by employees under agreements entered into under the authority contained in RCW 41.50.770 shall be paid into the deferred compensation principal account and shall be sufficient to cover costs of administration and staffing in addition to such other amounts as determined by the department. The deferred compensation principal account shall be used to carry out the purposes of RCW 41.50.770. All eligible state employees shall be given the opportunity to participate in agreements entered into by the department under RCW 41.50.770. State agencies shall cooperate with the department in providing employees with the opportunity to participate.

(3) Any county, municipality, or other subdivision of the state may elect to participate in any agreements entered into by the department under RCW 41.50.770, including the making of payments therefrom to the employees participating in a deferred compensation plan upon their separation from state or



other qualifying service. Accordingly, the deferred compensation principal account shall be considered to be a public pension or retirement fund within the meaning of Article XXIX, section 1 of the state Constitution, for the purpose of determining eligible investments and deposits of the moneys therein.

(4) All moneys in the deferred compensation principal account, all property and rights purchased therewith, and all income attributable thereto, shall remain (until made available to the participating employee or other beneficiary) solely the money, property, and rights of the state and participating counties, municipalities, and subdivisions (without being restricted to the provision of benefits under the plan) subject only to the claims of the state's and participating jurisdictions' general creditors. Participating jurisdictions shall each retain property rights separately.

(5) The state investment board, at the request of the employee retirement benefits board as established under RCW 41.50.086, is authorized to invest moneys in the deferred compensation principal account in accordance with RCW 43.84.150. Except as provided in RCW 43.33A.160, one hundred percent of all earnings from these investments shall accrue directly to the deferred compensation principal account.

(6) The deferred compensation administrative account is hereby created in the state treasury. All expenses of the department pertaining to the deferred compensation plan including staffing and administrative expenses shall be paid out of the deferred compensation administrative account. Any excess of earnings of investments of balances credited to this account over administrative expenses disbursed from this account shall be transferred to the deferred compensation principal account. Any deficiency in the deferred compensation administrative account caused by an excess of administrative expenses disbursed from this account over earnings of investments of balances credited to this account shall be transferred to this account from the deferred compensation principal account.

(7) In addition to the duties specified in this section and RCW 41.50.770, the department shall administer the salary reduction plan established in RCW 41.04.600 through 41.04.645.

(8) The department shall keep or cause to be kept full and adequate accounts and records of the assets, obligations, transactions, and affairs of any deferred compensation plans created under RCW 41.50.770 and this section.

~~(9) ((The department shall file an annual report of the financial condition, transactions, and affairs of the deferred compensation plans under its jurisdiction. A copy of the annual report shall be filed with the speaker of the house of representatives, the president of the senate, the governor, and the state auditor.~~

~~—(10))~~ Members of the employee retirement benefits board established under RCW 41.50.086 shall be deemed to stand in a fiduciary relationship to the employees participating in the deferred compensation plans created under RCW 41.50.770 and this section and shall discharge the duties of their respective positions in good faith and with that diligence, care, and skill which ordinary prudent persons would exercise under similar circumstances in like positions.

~~((+))~~ (10) The department may adopt rules necessary to carry out the purposes of RCW 41.50.770 and this section.

Sec. 43. RCW 41.52.040 and 1967 c 128 s 2 are each amended to read as follows:

The commission shall have the following powers and duties:

(1) Study the pension and benefit laws applicable to officers and employees in governmental service throughout the state and appraise and evaluate the existing laws pertaining to this subject;

(2) Study and consider the financial problems of the several retirement and pension funds and make recommendations as to revisions in financial provisions and methods of amortizing the accrued liabilities of such funds without impairment of any of the rights and equities of participants and beneficiaries but in conformity with sound and established principles of financing pension fund obligations;

(3) Study and make recommendations concerning the extension of pension coverage to public employees to whom pension protection has not been accorded;

(4) Study and make recommendations concerning the preservation and continuity of earned rights and credits in public employment for pension purposes including a thorough study of the legal, financial and other aspects of so-called legal vesting of pension rights;

(5) Evaluate all pension proposals in terms of policy, cost implications, and their impact on other public employee retirement programs;

(6) Consider all aspects of pension planning and operation aiming toward the development of a standard pension policy grounded in fundamental principles;

(7) Consider the feasibility of codifying pension laws;

(8) Make available to such public officers and employees at all levels of government as it shall deem advisable, information as to pension and benefit studies, recommendations, and evaluations as to afford them an opportunity to become familiar with all aspects of pension problems so they may develop sound legislative and fiscal policies in accordance with established concepts of good retirement planning and sound financing;

~~(9) (Report from time to time, at least biennially, to the members of the legislature, and to the governor, its conclusions and recommendations;~~

~~(+))~~ Prepare an explanatory note for each pension bill introduced in the legislature, which note shall briefly explain the financial impact and policies of the bill, indicate the impact on the relative position of the system affected with the other public pension systems, and which shall be attached to or printed upon the printed bill;

~~((+))~~ (10) Study and make recommendations on the investment policies and procedures of all public pension systems.

Sec. 44. RCW 41.52.070 and 1967 c 160 s 1 are each amended to read as follows:

The state public pension commission shall employ on a contractual basis a qualified investment counsel. Such counsel shall be a business organization having experience in securities analyses and investment counseling for both private and public pension funds on a national basis for a minimum of three consecutive years during the five years immediately prior to employment by the commission. The counsel shall not be engaged in the business of buying, selling, or otherwise marketing securities during the time of its employment by the commission.

The securities counsel shall make periodic examinations of the transactions and portfolio of each public pension system in the state. The administrator of each pension system shall cooperate with and make its records available to the counsel. The counsel shall file a copy of its examination report with the public pension system examined and also with the public pension commission. ~~((The public pension commission shall include in its biennial report to the legislature a summarization of all such examination reports.))~~ The securities counsel shall be available on request of the board of trustees of any public retirement system in the state of Washington for investment counseling pertaining to any or all proposed changes in the investment portfolio of that system.

**Sec. 45.** RCW 42.16.017 and 1983 1st ex.s. c 28 s 6 are each amended to read as follows:

The director of financial management shall adopt the necessary policies and procedures to implement RCW 42.16.010 through 42.16.017, including the establishment of paydates. Such paydates shall conform to RCW 42.16.010. The director of financial management shall have approval over all agency and state payroll systems and shall determine the payroll systems to be used by state agencies to ~~((insure))~~ ensure the implementation of RCW 42.16.010 and 41.04.232: PROVIDED, That for purposes of the central personnel payroll system, the provisions of RCW 41.07.020 shall apply. ~~((The director shall provide a comprehensive report to the legislature on December 31, 1984, on the implementation of and compliance with RCW 42.16.010 and 41.04.232, including the timeliness of payments to state employees.))~~

**Sec. 46.** RCW 43.01.240 and 1995 c 215 s 3 are each amended to read as follows:

(1) There is hereby established an account in the state treasury to be known as the state agency parking account. All parking income collected from the fees imposed by state agencies on parking spaces at state-owned or leased facilities, including the capitol campus, shall be deposited in the state agency parking account. Only the office of financial management may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. No agency may receive an allotment greater than the amount of revenue deposited into the state agency parking account.

(2) An agency may, as an element of the agency's commute trip reduction program to achieve the goals set forth in RCW 70.94.527, impose parking rental fees at state-owned and leased properties. These fees will be deposited in the state agency parking account. Each agency shall establish a committee to advise the agency director on parking rental fees, taking into account the market rate of comparable, privately owned rental parking in each region. The agency shall solicit representation of the employee population including, but not limited to, management, administrative staff, production workers, and state employee bargaining units. Funds shall be used by agencies to: (a) Support the agencies' commute trip reduction program under RCW 70.94.521 through 70.94.551; (b) support the agencies' parking program; or (c) support the lease or ownership costs for the agencies' parking facilities.

(3) In order to reduce the state's subsidization of employee parking, after July 1997 agencies shall not enter into leases for employee parking in excess of building code requirements, except as authorized by the director of general administration. In situations where there are fewer parking spaces than employees at a worksite, parking must be allocated equitably, with no special preference given to managers.

~~((4) The director of general administration must report to the house and senate transportation committees no later than December 1, 1997, regarding the implementation of chapter 215, Laws of 1995. The report must include an estimate of the reduction in parking supply and an estimate of the cost savings.))~~

**Sec. 47.** RCW 43.06.115 and 1996 c 186 s 505 are each amended to read as follows:

(1) The governor may, by executive order, after consultation with or notification of the executive-legislative committee on economic development created by chapter . . . (Senate Bill No. 5300), Laws of 1993, declare a community to be a "military impacted area." A "military impacted area" means a community or communities, as identified in the executive order, that experience serious social and economic hardships because of a change in defense spending by the federal government in that community or communities.

(2) If the governor executes an order under subsection (1) of this section, the governor shall establish a response team to coordinate state efforts to assist the military impacted community. The response team may include, but not be limited to, one member from each of the following agencies: (a) The department of community, trade, and economic development; (b) the department of social and health services; (c) the employment security department; (d) the state board for community and technical colleges; (e) the higher education coordinating board; and (f) the department of transportation. The governor may appoint a response team coordinator. The governor shall seek to actively involve the impacted community or communities in planning and implementing a response to the crisis. The governor may seek input or assistance from the community diversification advisory committee, and the governor may establish task forces in the community or communities to assist in the coordination and delivery of services to the local

community. The state and community response shall consider economic development, human service, and training needs of the community or communities impacted.

~~((3) The governor shall report at the beginning of the next legislative session to the legislature and the executive legislative committee on economic development created by chapter . . . (Senate Bill No. 5300), Laws of 1993, as to the designation of a military impacted area. The report shall include recommendations regarding whether a military impacted area should become eligible for (a) funding provided by the community economic revitalization board, public facilities construction loan revolving account, Washington state development loan fund, basic health plan, the public works assistance account, department of community, trade, and economic development, employment security department, and department of transportation; (b) training for dislocated defense workers; or (c) services for dislocated defense workers.))~~

Sec. 48. RCW 43.121.130 and 1988 c 278 s 3 are each amended to read as follows:

(1) Funding shall be provided, as funds are available, in decreasing amounts over a two-year period, with the goal of having the programs become supported by local communities at the end of a two-year period. State funding may be continued in areas where local funding would be difficult to obtain due to local economic conditions to the extent funding is made available to the council.

(2) The council shall work with the projects in the program to evaluate the results of the projects. The council shall make recommendations on these projects and the program. A project agreeing to develop an evaluation component shall be considered for a three-year funding schedule. ~~((A report on the evaluations shall be made available to the legislature at the beginning of the legislative session in 1992.))~~

Sec. 49. RCW 43.147.070 and 1993 c 485 s 4 are each amended to read as follows:

The PNWER-Net working subgroup shall have the following duties:

(1) To work with working subgroups from other member states and provinces in an entity known as the PNWER-Net working group to develop PNWER-Net; and

(2) To assist the PNWER-Net working group in developing criteria to ensure that designated member libraries use existing telecommunications infrastructure including the internet ~~((and~~

~~—(3) To report to the legislature by December 1, 1994, concerning the status of PNWER-Net)).~~

Sec. 50. RCW 43.163.090 and 1997 c 257 s 1 are each amended to read as follows:

The authority shall adopt a general plan of economic development finance objectives to be implemented by the authority during the period of the plan. The authority may exercise the powers authorized under this chapter prior to the

adoption of the initial plan. In developing the plan, the authority shall consider and set objectives for:

- (1) Employment generation associated with the authority's programs;
- (2) The application of funds to sectors and regions of the state economy evidencing need for improved access to capital markets and funding resources;
- (3) Geographic distribution of funds and programs available through the authority;
- (4) Eligibility criteria for participants in authority programs;
- (5) The use of funds and resources available from or through federal, state, local, and private sources and programs;
- (6) Standards for economic viability and growth opportunities of participants in authority programs;
- (7) New programs which serve a targeted need for financing assistance within the purposes of this chapter; and
- (8) Opportunities to improve capital access as evidenced by programs existent in other states or as they are made possible by results of private capital market circumstances.

The authority shall, as part of the finance plan required under this section, develop an outreach and marketing plan designed to increase its financial services to distressed counties. As used in this section, "distressed counties" has the same meaning as distressed area in RCW 43.168.020.

At least one public hearing shall be conducted by the authority on the plan prior to its adoption. The plan shall be adopted by resolution of the authority no later than November 15, 1990. ~~((The plan shall be submitted to the chief clerk of the house of representatives and secretary of the senate for transmittal to and review by the appropriate standing committees no later than December 15, 1990.))~~ The authority ~~((shall))~~ may periodically update the plan as determined necessary by the authority ~~((, but not less than once every two years))~~. The plan or updated plan shall include a report on authority activities conducted since the commencement of authority operation or since the last plan was reported, whichever is more recent, including a statement of results achieved under the purposes of this chapter and the plan. Upon adoption, the authority shall conduct its programs in observance of the objectives established in the plan.

**Sec. 51.** RCW 43.163.120 and 1994 c 238 s 3 are each amended to read as follows:

The authority shall receive no appropriation of state funds. The department of community, trade, and economic development shall provide staff to the authority, to the extent permitted by law, to enable the authority to accomplish its purposes; the staff from the department of community, trade, and economic development may assist the authority in organizing itself and in designing programs, but shall not be involved in the issuance of bonds or in making credit decisions regarding financing provided to borrowers by the authority. ~~((The authority shall report each December on its activities to the appropriate standing committees of the house of representatives and senate.))~~

**Sec. 52.** RCW 43.168.130 and 1987 c 461 s 7 are each amended to read as follows:

~~((+))~~ The committee shall develop performance standards for judging the effectiveness of the program. Such standards shall include, to the extent possible, examining the effectiveness of grants in regard to:

- ~~((a))~~ (1) Job creation for individuals of low and moderate income;
- ~~((b))~~ (2) Retention of existing employment;
- ~~((c))~~ (3) The creation of new employment opportunities;
- ~~((d))~~ (4) The diversification of the economic base of local communities;
- ~~((e))~~ (5) The establishment of employee cooperatives;
- ~~((f))~~ (6) The provision of assistance in cases of employee buy-outs of firms to prevent the loss of existing employment;
- ~~((g))~~ (7) The degree of risk assumed by the development loan fund, with emphasis on loans which did not receive financing from commercial lenders, but which are considered financially sound.

~~((2) The committee shall report to the appropriate standing committees of the legislature on the development of performance standards by January 1, 1988-))~~

**Sec. 53.** RCW 43.175.020 and 1987 c 348 s 7 are each amended to read as follows:

The governor's small business improvement council shall seek to: Identify regulatory, administrative, and legislative proposals that will improve the entrepreneurial environment for small businesses; and advise and comment on state business programs and the business assistance center on program policies, and services to assist small businesses. In consultation with the business assistance center and the appropriate standing committees of the senate and house of representatives, the governor's small business improvement council ~~((shall))~~ may submit its proposals and recommendations to the governor and the legislature ~~((prior to the convening of each regular session of the legislature))~~.

**Sec. 54.** RCW 43.19.19052 and 1995 c 269 s 1403 are each amended to read as follows:

Initial policy determinations for the functions described in RCW 43.19.1905 shall be developed and published within the 1975-77 biennium by the director for guidance and compliance by all state agencies, including educational institutions, involved in purchasing and material control. Modifications to these initial supply management policies established during the 1975-77 biennium shall be instituted by the director in future biennia as required to maintain an efficient and up-to-date state supply management system. ~~((The director shall transmit to the governor and the legislature in June 1976 and June 1977 a progress report which indicates the degree of accomplishment of each of these assigned duties, and which summarizes specific achievements obtained in increased effectiveness and dollar savings or cost avoidance within the overall state purchasing and material control system. The second progress report in June 1977 shall include a comprehensive supply management plan which includes the recommended~~

~~organization of a state-wide purchasing and material control system and development of an orderly schedule for implementing such recommendation. In the interim between these annual progress reports, the director shall furnish periodic reports to the office of financial management for review of progress being accomplished in achieving increased efficiencies and dollar savings or cost avoidance:))~~

It is the intention of the legislature that measurable improvements in the effectiveness and economy of supply management in state government shall be achieved during the 1975-77 biennium, and each biennium thereafter. All agencies, departments, offices, divisions, boards, and commissions and educational, correctional, and other types of institutions are required to cooperate with and support the development and implementation of improved efficiency and economy in purchasing and material control. To effectuate this legislative intention, the director, through the state purchasing and material control director, shall have the authority to direct and require the submittal of data from all state organizations concerning purchasing and material control matters.

**Sec. 55.** RCW 43.19.19362 and 1987 c 505 s 25 are each amended to read as follows:

There is hereby created a risk management office within the department of general administration. The director of general administration shall implement the risk management policy in RCW 43.19.19361 through the risk management office. The director of general administration shall appoint a risk manager to supervise the risk management office. The risk management office shall make recommendations when appropriate to state agencies on the application of prudent safety, security, loss prevention, and loss minimization methods so as to reduce or avoid risk or loss. ~~((The director of general administration shall submit a risk management report biennially to the governor, with copies to the chairs of the standing committees having jurisdiction on judiciary and insurance and the ways and means and state governmental operations committees in the senate and the house of representatives, including one copy to the staff of each of the committees. The management report shall describe the plans, policies, and operation of the risk management office and shall at least include the following:~~

- ~~— (1) Success in implementing stated goals and objectives for the risk management office;~~
- ~~— (2) Improving loss control and prevention practices;~~
- ~~— (3) Self-insuring risks of loss to state-owned property except where bond indentures or other special considerations require the purchase of insurance;~~
- ~~— (4) Consolidating insurance coverages for properties requiring insurance by bond indenture;~~
- ~~— (5) Establishing an emergency fund to provide assistance to state agencies in the event of serious property loss;~~
- ~~— (6) Self-insuring liability risks to public and professional third parties;~~
- ~~— (7) Funding of the tort claims revolving fund on an actuarial basis;~~



~~—(8) A program of excess liability coverage above a selected self-insurance limit;~~

~~—(9) Identification of cost savings and cost avoidances achieved during the preceding two years; and~~

~~—(10) Appropriate recommendations for new or amended legislation.)~~

*\*Sec. 56. RCW 43.19.554 and 1994 sp.s. c 9 s 803 are each amended to read as follows:*

*(1) To carry out the purposes of RCW 43.19.550 through 43.19.558 and 46.08.065, the director of general administration has the following powers and duties:*

*(a) To develop and implement a state-wide information system to collect, analyze, and disseminate data on the acquisition, operation, management, maintenance, repair, disposal, and replacement of all state-owned passenger motor vehicles. State agencies shall provide the department with such data as is necessary to implement and maintain the system. The department shall provide state agencies with information and reports designed to assist them in achieving efficient and cost-effective management of their passenger motor vehicle operations.*

*(b) To survey state agencies to identify the location, ownership, and condition of all state-owned fuel storage tanks.*

*(c) In cooperation with the department of ecology and other public agencies, to prepare a plan and funding proposal for the inspection and repair or replacement of state-owned fuel storage tanks, and for the clean-up of fuel storage sites where leakage has occurred. The plan and funding proposal shall be submitted to the governor no later than December 1, 1989.*

*(d) To develop and implement a state-wide motor vehicle fuel purchase, distribution, and accounting system to be used by all state agencies and their employees. The director may exempt agencies from participation in the system if the director determines that participation interferes with the statutory duties of the agency.*

*(e) To establish minimum standards and requirements for the content and frequency of safe driving instruction for state employees operating state-owned passenger motor vehicles, which shall include consideration of employee driving records. In carrying out this requirement, the department shall consult with other agencies that have expertise in this area.*

*(f) To develop a schedule, after consultation with affected state agencies, for state employees to participate in safe driving instruction.*

*(g) To require all state employees to provide proof of a driver's license recognized as valid under Washington state law prior to operating a state-owned passenger vehicle.*

*(h) To develop standards for the efficient and economical replacement of all categories of passenger motor vehicles used by state agencies and provide those standards to state agencies and the office of financial management.*

*(i) To develop and implement a uniform system and standards to be used for the marking of passenger motor vehicles as state-owned vehicles as provided for in RCW 46.08.065. The system shall be designed to enhance the resale value of passenger motor vehicles, yet ensure that the vehicles are clearly identified as property of the state.*

*(j) To develop and implement other programs to improve the performance, efficiency, and cost-effectiveness of passenger motor vehicles owned and operated by state agencies.*

*(k) To consult with state agencies and institutions of higher education in carrying out RCW 43.19.550 through 43.19.558.*

*(2) The director shall establish an operational unit within the department to carry out subsection (1) of this section. The director shall employ such personnel as are necessary to carry out RCW 43.19.550 through 43.19.558. Not more than three employees within the unit may be exempt from chapter 41.06 RCW.*

~~*((3) No later than December 31, 1992, the director shall report to the governor and appropriate standing committees of the legislature on the implementation of programs prescribed by this section, any cost savings and efficiencies realized by their implementation, and recommendations for statutory changes.))*~~

\*Sec. 56 was vetoed. See message at end of chapter.

Sec. 57. RCW 43.19A.030 and 1991 c 297 s 4 are each amended to read as follows:

(1) By January 1, 1993, each local government shall review its existing procurement policies and specifications to determine whether recycled products are intentionally or unintentionally excluded. The policies and specifications shall be revised to include such products unless a recycled content product does not meet an established performance standard of the agency.

(2) By fiscal year 1994, each local government shall adopt a minimum purchasing goal for recycled content as a percentage of the total dollar value of supplies purchased. To assist in achieving this goal each local government shall adopt a strategy by January 1, 1993, and shall submit a description of the strategy to the department. ~~*((The department shall report to the appropriate standing committees of the legislature by October 1, 1993, on the progress of implementation by local governments, and shall thereafter periodically report on the progress of recycled product purchasing by state and other public agencies.))*~~ All public agencies shall respond to requests for information from the department for the purpose of its reporting requirements under this section.

(3) Each local government shall designate a procurement officer who shall serve as the primary contact with the department for compliance with the requirements of this chapter.

(4) This section shall apply only to local governments with expenditures for supplies exceeding five hundred thousand dollars for fiscal year 1989.

Expenditures for capital goods and for electricity, water, or gas for resale shall not be considered a supply expenditure.

**Sec. 58.** RCW 43.20.235 and 1993 sp.s. c 4 s 10 are each amended to read as follows:

Water purveyors required to develop a water system plan pursuant to RCW 43.20.230 shall evaluate the feasibility of adopting and implementing water delivery rate structures that encourage water conservation. This information shall be included in water system plans submitted to the department of health for approval after July 1, 1993. The department shall evaluate the following:

- (1) Rate structures currently used by public water systems in Washington; and
- (2) Economic and institutional constraints to implementing conservation rate structures.

~~((The department shall provide its findings to the appropriate committees of the legislature no later than December 31, 1995:))~~

**Sec. 59.** RCW 43.20A.725 and 1993 c 425 s 1 are each amended to read as follows:

(1) The department shall maintain a program whereby TTs, signal devices, and amplifying accessories capable of serving the needs of the hearing and speech impaired shall be provided under the standards established in subsection ~~((1))~~ (10) of this section to an individual of school age or older:

(a) Who is certified as hearing impaired by a licensed physician, audiologist, or a qualified state agency, and to any subscriber that is an organization representing the hearing impaired, as determined and specified by the TRS program advisory committee; or

(b) Who is certified as speech impaired by a licensed physician, speech pathologist, or a qualified state agency, and to any subscriber that is an organization representing the speech impaired, as determined and specified by the TRS program advisory committee.

For the purpose of this section, certification implies that individuals cannot use the telephone for expressive or receptive communications due to hearing or speech impairment.

(2) The office shall award contracts on a competitive basis, to qualified persons for which eligibility to contract is determined by the office, for the distribution and maintenance of such TTs, signal devices, and amplifying accessories as shall be determined by the office. When awarding such contracts, the office may consider the quality of equipment and, with the director's approval, may award contracts on a basis other than cost. Such contracts may include a provision for the employment and use of a qualified trainer and the training of recipients in the use of such devices.

(3) The office shall establish and implement a policy for the ultimate responsibility for recovery of TTs, signal devices, and amplifying accessories

from recipients who have been provided with the equipment without cost and who are moving from this state or who for other reasons are no longer using them.

(4) Pursuant to recommendations of the TRS program advisory committee, until July 26, 1993, the office shall maintain a program whereby a relay system will be provided state-wide using operator intervention to connect hearing impaired and speech impaired persons and offices or organizations representing the hearing impaired and speech impaired, as determined and specified by the TDD advisory committee pursuant to RCW 43.20A.730. The relay system shall be the most cost-effective possible and shall operate in a manner consistent with federal requirements for such systems.

(5) Pursuant to the recommendations of the TDD task force report of December 1991, and with the express purpose of maintaining state control and jurisdiction, the office shall seek certification by the federal communications commission of the state-wide relay service.

(6) The office shall award contracts for the operation and maintenance of the state-wide relay service. The initial contract shall be for service commencing on or before July 26, 1993. The contract shall be awarded to an individual company registered as a telecommunications company by the utilities and transportation commission, to a group of registered telecommunications companies, or to any other company or organization determined by the office as qualified to provide relay services, contingent upon that company or organization being approved as a registered telecommunications company prior to final contract approval.

(7) The program shall be funded by a telecommunications relay service (TRS) excise tax applied to each switched access line provided by the local exchange companies. The office shall determine, in consultation with the TRS program advisory committee, the budget needed to fund the program on an annual basis, including both operational costs and a reasonable amount for capital improvements such as equipment upgrade and replacement. The budget proposed by the office, together with documentation and supporting materials, shall be submitted to the office of financial management for review and approval. The approved budget shall be given by the department in an annual budget to the utilities and transportation commission no later than March 1 prior to the beginning of the fiscal year. The utilities and transportation commission shall then determine the amount of TRS excise tax to be placed on each access line and shall inform each local exchange company of this amount no later than May 15. The utilities and transportation commission shall determine the amount of TRS excise tax by dividing the total of the program budget, as submitted by the office, by the total number of access lines, and shall not exercise any further oversight of the program under this subsection. The TRS excise tax shall not exceed nineteen cents per month per access line. Each local exchange company shall impose the amount of excise tax determined by the commission as of July 1, and shall remit the amount collected directly to the department on a monthly basis. The TRS excise tax shall be separately identified on each ratepayer's bill with the following statement: "Funds federal ADA requirement." All proceeds from the

TRS excise tax shall be put into a fund to be administered by the office through the department.

(8) The office shall administer and control the award of money to all parties incurring costs in implementing and maintaining telecommunications services, programs, equipment, and technical support services in accordance with the provisions of RCW 43.20A.725.

~~(9) ((The department shall provide the legislature with a biennial report on the operation of the program. The first report shall be provided no later than December 1, 1990, and successive reports every two years thereafter. Reports shall be prepared in consultation with the TRS program advisory committee and the utilities and transportation commission. The reports shall, at a minimum, briefly outline the accomplishments of the program, the number of persons served, revenues and expenditures, the prioritizing of services to those eligible based on such factors as degree of physical handicap or the allocation of the program's revenue between provision of devices to individuals and operation of the state-wide relay service, other major policy or operational issues, and proposals for improvements or changes for the program. The first report shall contain a study which includes examination of like programs in other states, alternative methods of financing the program, alternative methods of using the telecommunications system, advantages and disadvantages of operating the TRS program from within the department, by telecommunications companies, and by a private, nonprofit corporation, and means to limit demand for system usage.~~

~~—(10))~~ The program shall be consistent with the requirements of federal law for the operation of both interstate and intrastate telecommunications services for the deaf or hearing impaired or speech impaired. The department and the utilities and transportation commission shall be responsible for ensuring compliance with federal requirements and shall provide timely notice to the legislature of any legislation that may be required to accomplish compliance.

~~((11))~~ (10)(a) The department shall provide TTs, signal devices, and amplifying accessories to a person eligible under subsection (1) of this section at no charge in addition to the basic exchange rate if:

(i) The person is eligible for participation in the Washington telephone assistance program under RCW 80.36.470;

(ii) The person's annual family income is equal to or less than one hundred sixty-five percent of the federal poverty level; or

(iii) The person is a child eighteen years of age or younger with a family income less than or equal to two hundred percent of the federal poverty level.

(b) A person eligible under subsection (1) of this section with a family income greater than one hundred sixty-five percent and less than or equal to two hundred percent of the federal poverty level shall be assessed a charge for the cost of TTs, signal devices, and amplifying accessories based on a sliding scale of charges established by rule adopted by the department.

(c) The department shall charge a person eligible under subsection (1) of this section whose income exceeds two hundred percent of the federal poverty level the cost to the department of purchasing the equipment provided to that person.

(d) The department may waive part or all of the charges assessed under this subsection if the department finds that (i) the eligible person requires telebraille equipment or other equipment of similar cost and (ii) the charges normally assessed for the equipment under this subsection would create an exceptional or undue hardship on the eligible person.

(e) For the purposes of this subsection, certification of family income by the eligible person or the person's guardian or head of household is sufficient to determine eligibility.

**Sec. 60.** RCW 43.21J.030 and 1994 c 264 s 17 are each amended to read as follows:

(1) There is created the environmental enhancement and job creation task force within the office of the governor. The purpose of the task force is to provide a coordinated and comprehensive approach to implementation of chapter 516, Laws of 1993. The task force shall consist of the commissioner of public lands, the director of the department of fish and wildlife, the director of the department of ecology, the director of the parks and recreation commission, the timber team coordinator, the executive director of the work force training and education coordinating board, and the executive director of the Puget Sound water quality authority, or their designees. The task force may seek the advice of the following agencies and organizations: The department of community, trade, and economic development, the conservation commission, the employment security department, the interagency committee for outdoor recreation, appropriate federal agencies, appropriate special districts, the Washington state association of counties, the association of Washington cities, labor organizations, business organizations, timber-dependent communities, environmental organizations, and Indian tribes. The governor shall appoint the task force chair. Members of the task force shall serve without additional pay. Participation in the work of the committee by agency members shall be considered in performance of their employment. The governor shall designate staff and administrative support to the task force and shall solicit the participation of agency personnel to assist the task force.

(2) The task force shall have the following responsibilities:

(a) Soliciting and evaluating, in accordance with the criteria set forth in RCW 43.21J.040, requests for funds from the environmental and forest restoration account and making distributions from the account. The task force shall award funds for projects and training programs it approves and may allocate the funds to state agencies for disbursement and contract administration;

(b) Coordinating a process to assist state agencies and local governments to implement effective environmental and forest restoration projects funded under this chapter;

(c) Considering unemployment profile data provided by the employment security department((;

~~—(d) No later than December 31, 1993, providing recommendations to the appropriate standing committees of the legislature for improving the administration of grants for projects or training programs funded under this chapter that prevent habitat and environmental degradation or provide for its restoration;~~

~~—(e) Submitting to the appropriate standing committees of the legislature a biennial report summarizing the jobs and the environmental benefits created by the projects funded under this chapter)).~~

(3) Beginning July 1, 1994, the task force shall have the following responsibilities:

(a) To solicit and evaluate proposals from state and local agencies, private nonprofit organizations, and tribes for environmental and forest restoration projects;

(b) To rank the proposals based on criteria developed by the task force in accordance with RCW 43.21J.040; and

(c) To determine funding allocations for projects to be funded from the account created in RCW 43.21J.020 and for projects or programs as designated in the omnibus operating and capital appropriations acts.

Sec. 61. RCW 43.31.411 and 1993 c 280 s 43 are each amended to read as follows:

The Washington investment opportunities office shall:

(1) Maintain a list of all entrepreneurs engaged in manufacturing, wholesaling, transportation services, development of destination tourism resorts, or traded services throughout the state seeking capital resources and interested in the services of the investment opportunities office.

(2) Maintain a file on each entrepreneur which may include the entrepreneur's business plan and any other information which the entrepreneur offers for review by potential investors.

(3) Assist entrepreneurs in procuring the managerial and technical assistance necessary to attract potential investors. Such assistance shall include the automatic referral to the small business innovators opportunity program of any entrepreneur with a new product meriting the services of the program.

(4) Provide entrepreneurs with information about potential investors and provide investors with information about those entrepreneurs which meet the investment criteria of the investor.

(5) Promote small business securities financing.

(6) Remain informed about investment trends in capital markets and preferences of individual investors or investment firms throughout the nation through literature surveys, conferences, and private meetings.

(7) Publicize the services of the investment opportunities office through public meetings throughout the state, appropriately targeted media, and private meetings. Whenever practical, the office shall use the existing services of local

associate development organizations in outreach and identification of entrepreneurs and investors.

~~((8) Report to the ways and means committees and appropriate economic development committees of the senate and the house of representatives by December 1, 1989, and each year thereafter, on the accomplishments of the office. Such reports shall include:~~

~~—(a) The number of entrepreneurs on the list referred to in subsection (1) of this section, segregated by standard industrial classification codes;~~

~~—(b) The number of investments made in entrepreneurs, segregated as required by (a) of this subsection, as a result of contact with the investment opportunities office, the dollar amount of each such investment, the source, by state or nation, of each investment, and the number of jobs created as a result of each investment;~~

~~—(c) The number of entrepreneurs on the list referred to in subsection (1) of this section segregated by counties, the number of investments, the dollar amount of investments, and the number of jobs created through investments in each county as a result of contact with the investment opportunities office;~~

~~—(d) A categorization of jobs created through investments made as a result of contact with the investment opportunities office, the number of jobs created in each such category, and the average pay scale for jobs created in each such category;~~

~~—(e) The results of client satisfaction surveys distributed to entrepreneurs and investors using the services of the investment opportunities office; and~~

~~—(f) Such other information as the managing director finds appropriate.))~~

**Sec. 62.** RCW 43.31.526 and 1994 c 47 s 2 are each amended to read as follows:

(1) The department shall contract with governments, industry associations, or local nonprofit organizations to foster cooperation and linkages between distressed and nondistressed areas and between urban and rural areas, and between Washington and other Northwest states. The department may enter into joint contracts with multiple nonprofit organizations. Contracts with economic development organizations to foster cooperation and linkages between distressed and nondistressed areas and urban and rural areas shall be structured by the department and the distressed area marketplace programs. Contracts with economic development organizations shall:

(a) Award contracts based on a competitive bidding process, pursuant to chapter 43.19 RCW; and

(b) Ensure that each location contain sufficient business activity to permit effective program operation.

The department may require that contractors contribute at least twenty percent local funding.

(2) The contracts with governments, industry associations, or local nonprofit organizations shall be for, but not limited to, the performance of the following services for the Washington marketplace program:



(a) Contacting Washington state businesses to identify goods and services they are currently buying or are planning in the future to buy out-of-state and determine which of these goods and services could be purchased on competitive terms within the state;

(b) Identifying locally sold goods and services which are currently provided by out-of-state businesses;

(c) Determining, in consultation with local business, goods and services for which the business is willing to make contract agreements;

(d) Advertising market opportunities described in (c) of this subsection;

(e) Receiving bid responses from potential suppliers and sending them to that business for final selection; and

(f) Establish linkages with federal, regional, and Northwest governments, industry associations, and nonprofit organizations to foster buying leads and information benefiting Washington suppliers and industry and trade associations.

(3) Contracts may include provisions for charging service fees of businesses that participate in the program.

(4) The center shall also perform the following activities in order to promote the goals of the program:

(a) Prepare promotional materials or conduct seminars to inform communities and organizations about the Washington marketplace program;

(b) Provide technical assistance to communities and organizations interested in developing an import replacement program;

(c) Develop standardized procedures for operating the local component of the Washington marketplace program; and

(d) Provide continuing management and technical assistance to local contractors(~~and~~

~~—(e) Report by December 31 of each year to the appropriate economic development committees of the senate and the house of representatives describing the activities of the Washington marketplace program)).~~

**Sec. 63.** RCW 43.33.130 and 1981 c 3 s 25 are each amended to read as follows:

The state finance committee shall prepare written reports at least annually summarizing the debt management activities of the finance committee, which reports shall be sent to ~~((the governor, to the senate ways and means committee, the house appropriations committee,))~~ agencies having a direct financial interest in the issuance and sale of bonds by the committee, and to other persons on written request.

**Sec. 64.** RCW 43.41.240 and 1994 sp.s. c 9 s 875 are each amended to read as follows:

A new board or commission not established or required in statute that must be included in the report required by RCW 43.88.505 may not be established without the express approval of the director of financial management. ~~((The director shall, by January 8th of each year, submit to the legislature a list of those~~

~~boards and commissions that were requested for approval and those that were approved during the preceding calendar year.)~~

**Sec. 65.** RCW 43.43.934 and 1995 c 369 s 16 and 1995 c 243 s 11 are each reenacted and amended to read as follows:

Except for matters relating to the statutory duties of the chief of the Washington state patrol that are to be carried out through the director of fire protection, the board shall have the responsibility of developing a comprehensive state policy regarding fire protection services. In carrying out its duties, the board shall:

(1)(a) Adopt a state fire training and education master plan that allows to the maximum feasible extent for negotiated agreements: (i) With the state board for community and technical colleges to provide academic, vocational, and field training programs for the fire service and (ii) with the higher education coordinating board and the state colleges and universities to provide instructional programs requiring advanced training, especially in command and management skills;

(b) Adopt minimum standards for each level of responsibility among personnel with fire suppression, prevention, inspection, and investigation responsibilities that assure continuing assessment of skills and are flexible enough to meet emerging technologies. With particular respect to training for fire investigations, the master plan shall encourage cross training in appropriate law enforcement skills. To meet special local needs, fire agencies may adopt more stringent requirements than those adopted by the state;

(c) Cooperate with the common schools, technical and community colleges, institutions of higher education, and any department or division of the state, or of any county or municipal corporation in establishing and maintaining instruction in fire service training and education in accordance with any act of congress and legislation enacted by the legislature in pursuance thereof and in establishing, building, and operating training and education facilities.

Industrial fire departments and private fire investigators may participate in training and education programs under this chapter for a reasonable fee established by rule;

(d) Develop and adopt a master plan for constructing, equipping, maintaining, and operating necessary fire service training and education facilities subject to the provisions of chapter 43.19 RCW; and

(e) Develop and adopt a master plan for the purchase, lease, or other acquisition of real estate necessary for fire service training and education facilities in a manner provided by law.

(2) In addition to its responsibilities for fire service training, the board shall:

(a) Adopt a state fire protection master plan;

(b) Monitor fire protection in the state and develop objectives and priorities to improve fire protection for the state's citizens including: (i) The comprehensiveness of state and local inspections required by law for fire and life safety; (ii) the level of skills and training of inspectors, as well as needs for

additional training; and (iii) the efforts of local, regional, and state inspection agencies to improve coordination and reduce duplication among inspection efforts;

(c) Establish and promote state arson control programs and ensure development of local arson control programs;

(d) Provide representation for local fire protection services to the governor in state-level fire protection planning matters such as, but not limited to, hazardous materials control;

(e) Recommend to the director of community, trade, and economic development rules on minimum information requirements of automatic location identification for the purposes of enhanced 911 emergency service;

(f) Seek and solicit grants, gifts, bequests, devises, and matching funds for use in furthering the objectives and duties of the board, and establish procedures for administering them;

(g) Promote mutual aid and disaster planning for fire services in this state;

(h) Assure the dissemination of information concerning the amount of fire damage including that damage caused by arson, and its causes and prevention;

~~((h) Submit an annual report to the governor describing its activities undertaken pursuant to this chapter, and make such studies, reports, and recommendations to the governor and the legislature as are requested;))~~ and

(i) Implement any legislation enacted by the legislature to meet the requirements of any acts of congress that apply to this section.

(3) In carrying out its statutory duties, the board shall give particular consideration to the appropriate roles to be played by the state and by local jurisdictions with fire protection responsibilities. Any determinations on the division of responsibility shall be made in consultation with local fire officials and their representatives.

To the extent possible, the board shall encourage development of regional units along compatible geographic, population, economic, and fire risk dimensions. Such regional units may serve to: (a) Reinforce coordination among state and local activities in fire service training, reporting, inspections, and investigations; (b) identify areas of special need, particularly in smaller jurisdictions with inadequate resources; (c) assist the state in its oversight responsibilities; (d) identify funding needs and options at both the state and local levels; and (e) provide models for building local capacity in fire protection programs.

**Sec. 66.** RCW 43.51.400 and 1994 c 151 s 3 are each amended to read as follows:

The state parks and recreation commission shall:

(1) Coordinate a state-wide program of boating safety education using to the maximum extent possible existing programs offered by the United States power squadron and the United States coast guard auxiliary;

(2) Adopt rules in accordance with chapter 34.05 RCW, consistent with United States coast guard regulations, standards, and precedents, as needed for the efficient administration and enforcement of this section;

(3) Enter into agreements aiding the administration of this chapter;

(4) Adopt and administer a casualty and accident reporting program consistent with United States coast guard regulations;

(5) Adopt and enforce recreational boating safety rules, including but not necessarily limited to equipment and navigating requirements, consistent with United States coast guard regulations;

(6) Coordinate with local and state agencies the development of biennial plans and programs for the enhancement of boating safety, safety education, and enforcement of safety rules and laws; allocate money appropriated to the commission for these programs as necessary; and accept and administer any public or private grants or federal funds which are obtained for these purposes under chapter 43.88 RCW; and

~~(7) ((Biennially report to the legislature the effects of the combined efforts of state and local boating safety programs on the state's boating accident and fatality rate. The report shall assess and recommend new or alternative fire safety and accident prevention laws adopted in other states as well as successful programs employed by government or industry; and~~

~~—(8))~~ Take additional actions necessary to gain acceptance of a program of boating safety for this state under the federal boating safety act of 1971.

**Sec. 67.** RCW 43.51.944 and 1977 ex.s. c 306 s 4 are each amended to read as follows:

~~((+))~~ The full market value for department of natural resources' managed trust lands or interest therein within the conservation area shall be determined by the department of natural resources for any lands or interests to be dedicated or leased as provided herein. The department of natural resources shall determine the value of dedicating such lands or interests in lands as it may determine to be necessary to carry out the purposes of ~~((this 1977 amendatory act))~~ chapter 306, Laws of 1977 ex. sess. either by execution of fifty-five year scenic or development easements or by execution of fifty-five year leases, including such conditions as may be necessary to carry out the purposes of ~~((this 1977 amendatory act))~~ chapter 306, Laws of 1977 ex. sess. Any lease issued pursuant to ~~((this 1977 amendatory act))~~ chapter 306, Laws of 1977 ex. sess. may be subject to renewal under the provisions of RCW 79.01.276 as presently existing or hereafter amended. Nothing in ~~((this 1977 amendatory act))~~ chapter 306, Laws of 1977 ex. sess. shall be deemed to alter or affect normal management on lands owned by the state for which no dedication by easement or lease has been made and it is further recognized that no restrictions on management of such lands shall be required unless the applicable trust relating to such lands shall have been compensated.

~~((The completed report of the cost of obtaining the desired interest in these lands shall be presented by the department of natural resources to the interagency~~

~~committee for outdoor recreation and a summary of the report to the senate and house committees on parks and recreation by December 31, 1978.~~

~~—(2) The parks and recreation commission shall appraise all lands except those identified in subsection (1) of this section to establish fair market fee title value of the interests therein. The parks and recreation commission shall present to the interagency committee for outdoor recreation the completed report of the cost of obtaining the desired interest in such lands, and a summary of the report to the senate and house committees on parks and recreation by December 31, 1978.)~~

Sec. 68. RCW 43.52.360 and 1987 c 376 s 11 are each amended to read as follows:

Any two or more cities or public utility districts or combinations thereof may form an operating agency (herein sometimes called a joint operating agency) for the purpose of acquiring, constructing, operating and owning plants, systems and other facilities and extensions thereof, for the generation and/or transmission of electric energy and power. Each such agency shall be a municipal corporation of the state of Washington with the right to sue and be sued in its own name.

Application for the formation of an operating agency shall be made to the director of the department of ecology (herein sometimes referred to as the director) after the adoption of a resolution by the legislative body of each city or public utility district to be initial members thereof authorizing said city or district to participate. Such application shall set forth (1) the name and address of each participant, together with a certified copy of the resolution authorizing its participation; (2) a general description of the project and the principal project works, including dams, reservoirs, power houses and transmission lines; (3) the general location of the project and, if a hydroelectric project, the name of the stream on which such proposed project is to be located; (4) if the project is for the generation of electricity, the proposed use or market for the power to be developed; (5) a general statement of the electric loads and resources of each of the participants; (6) a statement of the proposed method of financing the preliminary engineering and other studies and the participation therein by each of the participants.

Within ten days after such application is filed with the director of the department of ecology notice thereof shall be published by the director once a week for four consecutive weeks in a newspaper of general circulation in the county or counties in which such project is to be located, setting forth the names of the participants and the general nature, extent and location of the project. Any public utility wishing to do so may object to such application by filing an objection, setting forth the reasons therefor, with the director of the department of ecology not later than ten days after the date of last publication of such notice.

Within ninety days after the date of last publication the director shall either make findings thereon or have instituted a hearing thereon. In ~~((the))~~ the event the director has neither made findings nor instituted a hearing within ninety days of the date of last publication, or if such hearing is instituted within such time but no findings are made within one hundred and twenty days of the date of such last

publication, the application shall be deemed to have been approved and the operating agency established. If it shall appear (a) that the statements set forth in said application are substantially correct; (b) that the contemplated project is such as is adaptable to the needs, both actual and prospective, of the participants and such other public utilities as indicate a good faith intention by contract or by letter of intent to participate in the use of such project; (c) that no objection to the formation of such operating agency has been filed by any other public utility which prior to and at the time of the filing of the application for such operating agency had on file a permit or license from an agency of the state or an agency of the United States, whichever has primary jurisdiction, for the construction of such project; (d) that adequate provision will be made for financing the preliminary engineering, legal and other costs necessary thereto; the director shall make findings to that effect and enter an order creating such operating agency, establishing the name thereof and the specific project for the construction and operation for which such operating agency is formed. Such order shall not be construed to constitute a bar to any other public utility proceeding according to law to procure any required governmental permits, licenses or authority, but such order shall establish the competency of the operating agency to proceed according to law to procure such permits, licenses or authority.

No operating agency shall undertake projects or conservation activities in addition to those for which it was formed without the approval of the legislative bodies of a majority of the members thereof. Prior to undertaking any new project for acquisition of an energy resource, a joint operating agency shall prepare a plan which details a least-cost approach for investment in energy resources. The plan shall include an analysis of the costs of developing conservation compared with costs of developing other energy resources and a strategy for implementation of the plan. The plan shall be (~~updated annually and~~) presented to the energy and utilities committees of the senate and house of representatives for their review and comment. In the event that an operating agency desires to undertake such a hydroelectric project at a site or sites upon which any publicly or privately owned public utility has a license or permit or has a prior application for a license or permit pending with any commission or agency, state or federal, having jurisdiction thereof, application to construct such additional project shall be made to the director of the department of ecology in the same manner, subject to the same requirements and with the same notice as required for an initial agency and project and shall not be constructed until an order authorizing the same shall have been made by the director in the manner provided for such original application.

Any party who has joined in filing the application for, or objections against, the creation of such operating agency and/or the construction of an additional project, and who feels aggrieved by any order or finding of the director shall have the right to appeal to the superior court in the manner set forth in RCW 43.52.430.

After the formation of an operating agency, any other city or district may become a member thereof upon application to such agency after the adoption of

a resolution of its legislative body authorizing said city or district to participate, and with the consent of the operating agency by the affirmative vote of the majority of its members. Any member may withdraw from an operating agency, and thereupon such member shall forfeit any and all rights or interest which it may have in such operating agency or in any of the assets thereof: PROVIDED, That all contractual obligations incurred while a member shall remain in full force and effect. An operating agency may be dissolved by the unanimous agreement of the members, and the members, after making provisions for the payment of all debts and obligations, shall thereupon hold the assets thereof as tenants in common.

**Sec. 69.** RCW 43.52.560 and 1987 c 376 s 1 are each amended to read as follows:

~~((+))~~ Except as provided otherwise in this chapter, a joint operating agency shall purchase any item or items of materials, equipment, or supplies, the estimated cost of which is in excess of five thousand dollars exclusive of sales tax, or order work for construction of generating projects and associated facilities, the estimated cost of which is in excess of ten thousand dollars exclusive of sales tax, by contract in accordance with RCW 54.04.070 and 54.04.080, which require sealed bids for contracts.

~~((2) When a joint operating agency executes a contract under RCW 43.52.565, 43.52.575, or 43.52.580, the managing director shall certify to the committees on energy and utilities of the senate and house of representatives in writing within thirty days after the contract is signed, that such contract is in the public interest, state the reason or reasons why, and indicate the estimated cost savings to the project compared to contracting for the same material, supplies, equipment or work through completion of work as contracted, including termination costs, or through sealed bids:))~~

**Sec. 70.** RCW 43.52.565 and 1994 c 27 s 1 are each amended to read as follows:

(1) An operating agency may enter into contracts through competitive negotiation under subsection (2) of this section for materials, equipment, supplies, or work to be performed during commercial operation of a nuclear generating project and associated facilities (a) to replace a defaulted contract or a contract terminated in whole or in part, or (b) where consideration of factors in addition to price, such as technical knowledge, experience, management, staff, or schedule, is necessary to achieve economical operation of the project, provided that the managing director or a designee determines in writing and the executive board finds that execution of a contract under this section will accomplish project completion or operation more economically than sealed bids.

(2) The selection of a contractor shall be made in accordance with the following procedures:

(a) Proposals shall be solicited through a request for proposals, which shall state the requirements to be met. Responses shall describe the professional competence of the offeror, the technical merits of the offer, and the price.

(b) The request for proposals shall be given adequate public notice in the same manner as for sealed bids.

(c) As provided in the request for proposals, the operating agency shall specify at a preproposal conference the contract requirements in the request for proposal, which may include but are not limited to: Schedule, managerial, and staffing requirements, productivity and production levels, technical expertise, approved project quality assurance procedures, and time and place for submission of proposals. Any inquiries and responses thereto shall be confirmed in writing and shall be sent to all potential offerors.

(d) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be open for public inspection after contract award.

(e) As provided in the request for proposals, invitations shall be sent to all responsible offerors who submit proposals to attend discussions for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Any inquiries and responses thereto shall be confirmed in writing and shall be sent to all offerors. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(f) The operating agency shall execute a contract with the responsible offeror whose proposal is determined in writing to be the most advantageous to the operating agency and the state taking into consideration the requirements set forth in the request for proposals. ~~((If a proposed contract exceeds ten million dollars, the operating agency shall notify the committees on energy and utilities of the senate and house of representatives at least thirty days prior to the date of contract execution and shall provide a copy of the contract with the notification.))~~ The contract file shall contain the basis on which the successful offeror is selected. The operating agency shall conduct a briefing conference on the selection if requested by an offeror.

(g) The contract may be fixed price or cost-reimbursable, in whole or in part, but not cost-plus-percentage-of-cost.

(h) The operating agency shall retain authority and responsibility for inspection, testing, and compliance with applicable regulations or standards of any state or federal governmental agency.

**Sec. 71.** RCW 43.63A.550 and 1990 1st ex.s. c 17 s 21 are each amended to read as follows:

(1) The department shall assist in the process of inventorying and collecting data on public and private land for the acquisition of data describing land uses,



demographics, infrastructure, critical areas, transportation corridors physical features, housing, and other information useful in managing growth throughout the state. For this purpose the department shall contract with the department of information services and shall form an advisory group consisting of representatives from state, local, and federal agencies, colleges and universities, and private firms with expertise in land planning, and geographic information systems.

(2) The department shall establish a sequence for acquiring data, giving priority to rapidly growing areas. The data shall be retained in a manner to facilitate its use in preparing maps, aggregating with data from multiple jurisdictions, and comparing changes over time. Data shall further be retained in a manner which permits its access via computer.

~~(3) ((By December 1, 1990, the department shall report to the appropriate committees of the house of representatives and senate on the availability of existing data; specific data which is needed but not currently available; data compatibility across jurisdictions; the suitability of various types of data for retention on computer; the cost of collecting, storing, updating, mapping, and manipulating data on a computer; and recommendations on how to maintain an inventory of data which is accessible to any user and whether to maintain the data at a central repository or decentralized repositories.~~

—(4)) The department shall work with other state agencies, local governments, and private organizations that are inventorying public and private lands to ensure close coordination and to ensure that duplication of efforts does not occur.

**Sec. 72.** RCW 43.70.066 and 1997 c 274 s 3 are each amended to read as follows:

(1) The department of health shall study the feasibility of a uniform quality assurance and improvement program for use by all public and private health plans and health care providers and facilities. In this study, the department shall consult with:

- (a) Public and private purchasers of health care services;
- (b) Health carriers;
- (c) Health care providers and facilities; and
- (d) Consumers of health services.

(2) In conducting the study, the department shall propose standards that meet the needs of affected persons and organizations, whether public or private, without creation of differing levels of quality assurance. All consumers of health services should be afforded the same level of quality assurance.

(3) At a minimum, the study shall include but not be limited to the following program components and indicators appropriate for consumer disclosure:

- (a) Health care provider training, credentialing, and licensure standards;
- (b) Health care facility credentialing and recredentialing;
- (c) Staff ratios in health care facilities;

(d) Annual mortality and morbidity rates of cases based on a defined set of procedures performed or diagnoses treated in health care facilities, adjusted to fairly consider variable factors such as patient demographics and case severity;

(e) The average total cost and average length of hospital stay for a defined set of procedures and diagnoses;

(f) The total number of the defined set of procedures, by specialty, performed by each physician at a health care facility within the previous twelve months;

(g) Utilization performance profiles by provider, both primary care and specialty care, that have been adjusted to fairly consider variable factors such as patient demographics and severity of case;

(h) Health plan fiscal performance standards;

(i) Health care provider and facility recordkeeping and reporting standards;

(j) Health care utilization management that monitors trends in health service underutilization, as well as overutilization of services;

(k) Health monitoring that is responsive to consumer, purchaser, and public health assessment needs; and

(l) Assessment of consumer satisfaction and disclosure of consumer survey results.

(4) In conducting the study, the department shall develop standards that permit each health care facility, provider group, or health carrier to assume responsibility for and determine the physical method of collection, storage, and assimilation of quality indicators for consumer disclosure. The study may define the forms, frequency, and posting requirements for disclosure of information.

In developing proposed standards under this subsection, the department shall identify options that would minimize provider burden and administrative cost resulting from duplicative private sector data submission requirements.

(5) The department shall submit a preliminary report to the legislature by December 31, 1995, including recommendations for initial legislation pursuant to subsection (6) of this section, and ~~((shall))~~ may submit supplementary reports and recommendations as completed, consistent with appropriated funds and staffing.

(6) The department shall not adopt any rule implementing the uniform quality assurance program or consumer disclosure provisions unless expressly directed to do so by an act of law.

**Sec. 73.** RCW 43.70.240 and 1989 1st ex.s. c 9 s 304 are each amended to read as follows:

The secretary and each of the professional licensing and disciplinary boards under the administration of the department shall enter into written operating agreements on administrative procedures with input from the regulated profession and the public. The intent of these agreements is to provide a process for the department to consult each board on administrative matters and to ensure that the administration and staff functions effectively enable each board to fulfill its statutory responsibilities. The agreements shall include, but not be limited to, the following provisions:

- (1) Administrative activities supporting the board's policies, goals, and objectives;
- (2) Development and review of the agency budget as it relates to the board; and
- (3) Board related personnel issues.

The agreements shall be reviewed and revised in like manner if appropriate at the beginning of each fiscal year, and at other times upon written request by the secretary or the board.

~~((The secretary shall report to the health care committees of the legislature, on or before February 28, 1990, on the implementation of the written operating agreement and the need, if any, for modification of this section.))~~

**Sec. 74.** RCW 43.70.330 and 1995 c 399 s 75 are each amended to read as follows:

(1) The department of health shall be the primary inspector of labor camps and farmworker housing for the state of Washington: PROVIDED, That the department of labor and industries shall be the inspector for all farmworker housing not covered by the authority of the state board of health.

(2) The department of health, the department of labor and industries, the department of community, trade, and economic development, the state board of health, and the employment security department shall develop an interagency agreement defining the rules and responsibilities for the inspection of farmworker housing. This agreement shall recognize the department of health as the primary inspector of labor camps for the state, and shall further be designed to provide a central information center for public information and education regarding farmworker housing. ~~((The agencies shall provide the legislature with a report on the results of this agreement by January 1, 1991.))~~

**Sec. 75.** RCW 43.70.530 and 1993 c 179 s 2 are each amended to read as follows:

The department of health, the department of social and health services, the department of community, trade, and economic development, the superintendent of public instruction, and the employment security department shall, collectively and collaboratively, develop a plan for a home health visitor program that shall have as its primary purpose the prevention of child abuse and neglect through the provision of selected educational and supportive services to high risk parents of newborns.

(1) The program shall: (a) Be community-based; (b) include early hospital-based screening to identify high risk parents of newborns; (c) provide for an effective, in-home outreach and support program for high risk parents of newborns that involves: (i) Frequent home visits, (ii) parent training on early childhood development, parenting, and the stress factors that lead to abuse and neglect, and (iii) referrals to needed social and health services; and (d) demonstrate effective coordination among current community-based programs that may also serve high risk parents and their infants, including child abuse

prevention programs, first steps, second steps, the early childhood education and assistance program, the healthy kids program, child welfare services, the women, infants, and ~~((child-[children]))~~ children program, the high priority infant tracking program, the birth to six program, local and state public health prevention and early intervention services, and other services as identified.

(2) The plan shall: (a) Include an estimate and a description of the high risk groups to be served; (b) detail the screening process and mechanisms to be used to identify high risk parents; (c) detail the services to be included in the in-home program; (d) describe staffing that may include the use of teams of professionals, paraprofessionals, and volunteers; (e) describe how the program will be evaluated, including the measurable outcomes to be achieved; and (f) provide an estimate of the costs to fully implement the program state-wide, and for possible consideration, a series of pilot projects with a phased-in schedule.

~~((3) The plan shall be provided to the appropriate legislative committees by December 1, 1993.))~~

Sec. 76, RCW 43.70.545 and 1994 sp.s. c 7 s 202 are each amended to read as follows:

(1) The department of health shall develop, based on recommendations in the public health services improvement plan and in consultation with affected groups or agencies, comprehensive rules for the collection and reporting of data relating to acts of violence, at-risk behaviors, and risk and protective factors. The data collection and reporting rules shall be used by any public or private entity that is required to report data relating to these behaviors and conditions. The department may require any agency or program that is state-funded or that accepts state funds and any licensed or regulated person or professional to report these behaviors and conditions. To the extent possible the department shall require the reports to be filed through existing data systems. The department may also require reporting of attempted acts of violence and of nonphysical injuries. For the purposes of this section "acts of violence" means self-directed and interpersonal behaviors that can result in suicide, homicide, and nonfatal intentional injuries. "At-risk behaviors," "protective factors," and "risk factors" have the same meanings as provided in RCW 70.190.010. A copy of the data used by a school district to prepare and submit a report to the department shall be retained by the district and, in the copy retained by the district, identify the reported acts or behaviors by school site.

(2) The department is designated as the state-wide agency for the coordination of all information relating to violence and other intentional injuries, at-risk behaviors, and risk and protective factors.

(3) The department shall provide necessary data to the local health departments for use in planning by or evaluation of any community network authorized under RCW 70.190.060.

~~(4) ((The department shall publish annual reports on intentional injuries, unintentional injuries, rates of at-risk youth, and associated risk and protective factors. The reports shall be submitted to the governor, the legislature, and the Washington state institute for public policy.~~

—(5)) The department shall by rule establish requirements for local health departments to perform assessment related to at-risk behaviors and risk and protective factors and to assist community networks in policy development and in planning and other duties under chapter 7, Laws of 1994 sp. sess.

((6)) (5) The department may, consistent with its general authority and directives under RCW 43.70.540 through 43.70.560, contract with a college or university that has experience in data collection relating to the health and overall welfare of children to provide assistance to:

(a) State and local health departments in developing new sources of data to track acts of violence, at-risk behaviors, and risk and protective factors; and

(b) Local health departments to compile and effectively communicate data in their communities.

Sec. 77. RCW 43.70.555 and 1994 sp.s. c 7 s 204 are each amended to read as follows:

The department, in consultation with the family policy council created in chapter 70.190 RCW, shall establish, by rule, standards for local health departments and networks to use in assessment, performance measurement, policy development, and assurance regarding social development to prevent health problems caused by risk factors empirically linked to: Violent criminal acts by juveniles, teen substance abuse, teen pregnancy and male parentage, teen suicide attempts, dropping out of school, child abuse or neglect, and domestic violence. The standards shall be based on the standards set forth in the public health services improvement plan as required by RCW 43.70.550.

~~(The department, in consultation with the family policy council, shall review the definitions of at-risk children and youth, protective factors, and risk factors contained in RCW 70.190.010 and make any suggested recommendations for change to the legislature by January 1, 1995.)~~

Sec. 78. RCW 43.70.600 and 1996 c 323 s 6 are each amended to read as follows:

When funds are appropriated for this purpose, the department shall conduct a survey of scientific literature regarding the possible health effects of human exposure to the radio frequency part of the electromagnetic spectrum (300Hz to 300GHz). The department ~~((shall))~~ may submit the survey results to the legislature, prepare a summary of that survey, and make the summary available to the public. The department ~~((shall))~~ may update the survey and summary periodically.

Sec. 79. RCW 43.72.860 and 1995 c 81 s 2 are each amended to read as follows:

(1) The department of labor and industries, in consultation with the workers' compensation advisory committee, may conduct pilot projects to purchase medical services for injured workers through managed care arrangements. The projects shall assess the effects of managed care on the cost and quality of, and

employer and employee satisfaction with, medical services provided to injured workers.

(2) The pilot projects may be limited to specific employers. The implementation of a pilot project shall be conditioned upon a participating employer and a majority of its employees, or, if the employees are represented for collective bargaining purposes, the exclusive bargaining representative, voluntarily agreeing to the terms of the pilot. Unless the project is terminated by the department, both the employer and employees are bound by the project agreements for the duration of the project.

(3) Solely for the purpose and duration of a pilot project, the specific requirements of Title 51 RCW that are identified by the department as otherwise prohibiting implementation of the pilot project shall not apply to the participating employers and employees to the extent necessary for conducting the project. Managed care arrangements for the pilot projects may include the designation of doctors responsible for the care delivered to injured workers participating in the projects.

(4) The projects shall conclude no later than January 1, 1997. ~~((The department shall make an interim report on the projects to the governor and appropriate committees of the legislature on or before October 1, 1996. The department shall present the final results of the pilot projects and any final recommendations related to the projects to the governor and appropriate committees of the legislature on or before April 1, 1997.))~~

**Sec. 80.** RCW 43.99F.040 and 1996 c 37 s 1 are each amended to read as follows:

The proceeds from the sale of the bonds deposited in the state and local improvements revolving account, Waste Disposal Facilities, 1980 of the general fund under the terms of this chapter shall be administered by the state department of ecology subject to legislative appropriation. The department may use or permit the use of any funds derived from the sale of bonds authorized under this chapter to accomplish the purpose for which the bonds are issued by direct expenditures and by grants or loans to public bodies, including grants to public bodies as cost-sharing funds in any case where federal, local, or other funds are made available on a cost-sharing basis for improvements within the purposes of this chapter. The department shall ensure that funds derived from the sale of bonds authorized under this chapter do not constitute more than seventy-five percent of the total cost of any waste disposal or management facility. Not more than two percent of the proceeds of the bond issue may be used by the department of ecology in relation to the administration of the expenditures, grants, and loans.

At least one hundred fifty million dollars of the proceeds of the bonds authorized by this chapter shall be used exclusively for waste management systems capable of producing renewable energy or energy savings as a result of the management of the wastes. "Renewable energy" means, but is not limited to, the production of steam, hot water for steam heat, electricity, cogeneration, gas, or fuel through the use of wastes by incineration, refuse-derived fuel processes,

pyrolysis, hydrolysis, or bioconversion, and energy savings through material recovery from waste source separation and/or recycling.

~~((Beginning with the biennium ending June 30, 1997, the department shall present a biennial progress report on the use of moneys from the account to the chairs of the senate committee on ways and means and the house of representatives committee on appropriations. The first report is due June 30, 1996, and the report for each succeeding biennium is due December 31 of the odd-numbered year. The report shall consist of a list of each recipient, project description, and amount of the grant, loan, or both:))~~

Integration of the management and operation of systems for solid waste disposal with systems of liquid waste disposal holds promise of improved waste disposal efficiency and greater environmental protection and restoration. To encourage the planning for and development of such integration, the department may provide for special grant incentives to public bodies which plan for or operate integrated waste disposal management systems.

Funds provided for waste disposal and management facilities under this chapter may be used for payments to a service provider under a service agreement pursuant to RCW 70.150.060. If funds are to be used for such payments, the department may make periodic disbursements to a public body or may make a single lump sum disbursement. Disbursements of funds with respect to a facility owned or operated by a service provider shall be equivalent in value to disbursements that would otherwise be made if that facility were owned or operated by a public body. Payments under this chapter for waste disposal and management facilities made to public bodies entering into service agreements pursuant to RCW 70.150.060 shall not exceed amounts paid to public bodies not entering into service agreements.

**Sec. 81.** RCW 43.200.180 and 1986 c 2 s 4 are each amended to read as follows:

The department of ecology shall be the state agency responsible for implementation of the federal low-level radioactive waste policy amendments act of 1985, including:

(1) Collecting and administering the surcharge assessed by the governor under RCW 43.200.170;

(2) Collecting low-level radioactive waste data from disposal facility operators, generators, intermediate handlers, and the federal department of energy;

(3) Developing and operating a computerized information system to manage low-level radioactive waste data;

(4) Denying and reinstating access to the Hanford low-level radioactive waste disposal facility pursuant to the authority granted under federal law;

(5) Administering and/or monitoring (a) the maximum waste volume levels for the Hanford low-level radioactive waste disposal facility, (b) reactor waste allocations, (c) priority allocations under the Northwest Interstate Compact on

Low-Level Radioactive Waste Management, and (d) adherence by other states and compact regions to federal statutory deadlines; and

(6) Coordinating the state's low-level radioactive waste disposal program with similar programs in other states(~~;~~ and

~~—(7) Preparing an annual report to the legislature which details the manifested curie content and cubic foot volume of the material received at the Hanford low-level radioactive waste disposal facility in a manner which allows for an assessment of the impact of volume reduction techniques and imposition of any surcharges on the amount of material received)).~~

**Sec. 82.** RCW 43.200.190 and 1986 c 2 s 6 are each amended to read as follows:

~~((+))~~ The department of ecology shall perform studies, by contract or otherwise, to define site closure and perpetual care and maintenance requirements for the Hanford low-level radioactive waste disposal facility and to assess the adequacy of insurance coverage for general liability, radiological liability, and transportation liability for the facility.

~~((2) The department shall complete the studies and report its findings to the legislature by December 31, 1987. The department shall make a preliminary progress report to the legislature by December 31, 1986.))~~

**Sec. 83.** RCW 43.200.200 and 1992 c 61 s 1 are each amended to read as follows:

(1) The director of the department of ecology shall periodically review the potential for bodily injury and property damage arising from the transportation and disposal of commercial low-level radioactive waste under permits issued by the state.

(2) The director may require permit holders to demonstrate financial assurance in an amount that is adequate to protect the state and its citizens from all claims, suits, losses, damages, or expenses on account of injuries to persons and property damage arising or growing out of the transportation or disposal of commercial low-level radioactive waste. The financial assurance may be in the form of insurance, cash deposits, surety bonds, corporate guarantees, and other acceptable instruments or guarantees determined by the director to be acceptable evidence of financial assurance.

(3) In making the determination of the appropriate level of financial assurance, the director shall consider:

(a) The nature and purpose of the activity and its potential for injury and damages to or claims against the state and its citizens;

(b) The current and cumulative manifested volume and radioactivity of waste being packaged, transported, buried, or otherwise handled;

(c) The location where the waste is being packaged, transported, buried, or otherwise handled, including the proximity to the general public and geographic features such as geology and hydrology, if relevant; and



(d) The legal defense cost, if any, that will be paid from the required financial assurance amount.

(4) The director may establish different levels of required financial assurance for various classes of permit holders.

(5) The director shall establish by rule the instruments or mechanisms by which a permit applicant or holder may demonstrate financial assurance as required by RCW 43.200.210.

~~((6) The director shall complete a review and determination, and report the results to the legislature by December 1, 1994, and at least every five years thereafter, the director shall conduct a new review and determination and report its results to the legislature.))~~

**Sec. 84.** RCW 43.210.050 and 1995 c 399 s 107 are each amended to read as follows:

The small business export finance assistance center formed under RCW 43.210.020 and 43.210.030 shall enter into a contract under this chapter with the department of community, trade, and economic development or its statutory successor. The contract shall require the center to provide export assistance services, consistent with RCW 43.210.070 and 43.210.100 through 43.210.120, shall have a duration of two years, and shall require the center to aggressively seek to fund its continued operation from nonstate funds. The contract shall also require the center to report annually to the department on its success in obtaining nonstate funding. Upon expiration of the contract, any provisions within the contract applicable to the Pacific Northwest export assistance project shall be automatically renewed without change provided the legislature appropriates funds for administration of the small business export assistance center and the Pacific Northwest export assistance project. The provisions of the contract related to the Pacific Northwest export assistance project may be changed at any time if the director of the department of community, trade, and economic development or the president of the small business export finance assistance center present compelling reasons supporting the need for a contract change to the board of directors and a majority of the board of directors agrees to the changes. The department of agriculture shall be included in the contracting negotiations with the department of community, trade, and economic development and the small business export finance assistance center when the Pacific Northwest export assistance project provides export services to industrial sectors within the administrative domain of the Washington state department of agriculture. ~~((The department of community, trade, and economic development, the small business export finance assistance center, and, if appropriate, the department of agriculture, shall report annually, as one group, to the appropriate legislative oversight committees on the progress of the Pacific Northwest export assistance project.))~~

**Sec. 85.** RCW 43.330.090 and 1994 c 144 s 1 are each amended to read as follows:

(1) The department shall work with private sector organizations, local governments, local economic development organizations, and higher education and training institutions to assist in the development of strategies to diversify the economy, facilitate technology transfer and diffusion, and increase value-added production by focusing on targeted sectors. The targeted sectors may include, but are not limited to, software, forest products, biotechnology, environmental industries, recycling markets and waste reduction, aerospace, food processing, tourism, film and video, microelectronics, new materials, robotics, and machine tools. The department shall, on a continuing basis, evaluate the potential return to the state from devoting additional resources to a targeted sector's approach to economic development and including additional sectors in its efforts. The department shall use information gathered in each service delivery region in formulating its sectoral strategies and in designating new targeted sectors.

(2) The department shall ensure that the state continues to pursue a coordinated program to expand the tourism industry throughout the state in cooperation with the public and private tourism development organizations. The department shall work to provide a balance of tourism activities throughout the state and during different seasons of the year. In addition, the department shall promote, market, and encourage growth in the production of films and videos, as well as television commercials within the state; to this end the department is directed to assist in the location of a film and video production studio within the state.

(3) In assisting in the development of a targeted sector, the department's activities may include, but are not limited to:

(a) Conducting focus group discussions, facilitating meetings, and conducting studies to identify members of the sector, appraise the current state of the sector, and identify issues of common concern within the sector;

(b) Supporting the formation of industry associations, publications of association directories, and related efforts to create or expand the activities or industry associations;

(c) Assisting in the formation of flexible networks by providing (i) agency employees or private sector consultants trained to act as flexible network brokers and (ii) funding for potential flexible network participants for the purpose of organizing or implementing a flexible network;

(d) Helping establish research consortia;

(e) Facilitating joint training and education programs;

(f) Promoting cooperative market development activities;

(g) Analyzing the need, feasibility, and cost of establishing product certification and testing facilities and services; and

(h) Providing for methods of electronic communication and information dissemination among firms and groups of firms to facilitate network activity.

~~(By January 10th of each year, the department shall report in writing on its targeted sector programs to the appropriate legislative economic development committees. The department's report shall include an appraisal of the sector;~~

~~activities the department has undertaken to assist in the development of each sector, and recommendations to the legislature regarding activities that the state should implement but are currently beyond the scope of the department's program or resources:))~~

**Sec. 86.** RCW 43.07.290 and 1997 c 329 s 1 are each amended to read as follows:

(1) The Washington quality award council shall be organized as a private, nonprofit corporation, in accordance with chapter 24.03 RCW and this section, with limited staff assistance by the secretary of state as provided by RCW 43.07.295.

(2) The council shall oversee the governor's Washington state quality achievement award program. The purpose of the program is to improve the overall competitiveness of the state's economy by stimulating Washington state industries, business, and organizations to bring about measurable success through setting standards of organizational excellence, encouraging organizational self-assessment, identifying successful organizations as role models, and providing a valuable mechanism for promoting and strengthening a commitment to continuous quality improvement in all sectors of the state's economy. The program shall annually recognize organizations that improve the quality of their products and services and are noteworthy examples of high-performing work organizations.

(3) The council shall consist of the governor and the secretary of state, or their designees, as chair and vice-chair, respectively, the director of the department of community, trade, and economic development, or his or her designee, and twenty-seven members appointed by the governor. Those twenty-seven council members must be selected from recognized professionals who shall have backgrounds in or experience with effective quality improvement techniques, employee involvement quality of work life initiatives, development of innovative labor-management relations, and other recognized leaders in state and local government and private business. The membership of the board beyond the chair and vice-chair shall be appointed by the governor for terms of three years.

(4) The council shall establish a board of examiners, a recognition committee, and such other subcouncil groups as it deems appropriate to carry out its responsibilities. Subcouncil groups established by the council may be composed of noncouncilmembers.

(5) The council shall compile a list of resources available for organizations interested in productivity improvement, quality techniques, effective methods of work organization, and upgrading work force skills as a part of the quality for Washington state foundation's ongoing educational programs. The council shall make the list of resources available to the general public.

(6) The council may conduct such public information, research, education, and assistance programs as it deems appropriate to further quality improvement in organizations operating in the state of Washington.

(7) The council shall:

- (a) Approve and announce achievement award recipients;
- (b) Approve guidelines to examine applicant organizations;
- (c) Approve appointment of judges and examiners;
- (d) Arrange appropriate annual awards and recognition for recipients, in conjunction with the quality for Washington state foundation;
- (e) Formulate recommendations for change in the nomination form or award categories, in cooperation with the quality for Washington state foundation; and
- (f) Review any related education, training, technology transfer, and research initiatives proposed to it, and that it determines (~~(merits {merit})~~) merit such a review.

(8) By January 1st of each even-numbered year, the council (~~(shall)~~) may report to the governor and the appropriate committees of the legislature on its activities in the proceeding two years and on any recommendations in state policies or programs that could encourage quality improvement and the development of high-performance work organizations.

(9) The council shall cease to exist on July 1, 1999, unless otherwise extended by law.

**Sec. 87.** RCW 44.40.070 and 1988 c 167 s 10 are each amended to read as follows:

Prior to October 1st of each even-numbered year all state agencies whose major programs consist of transportation activities, including the department of transportation, (~~(the utilities and transportation commission,)~~) the transportation improvement board, the Washington state patrol, the department of licensing, the traffic safety commission, the county road administration board, and the board of pilotage commissioners, shall adopt or revise, after consultation with the legislative transportation committee, a comprehensive six-year program and financial plan for all transportation activities under each agency's jurisdiction.

The comprehensive six-year program and financial plan shall state the general objectives and needs of each agency's major transportation programs, including workload and performance estimates.

**Sec. 88.** RCW 44.40.150 and 1989 1st ex.s. c 6 s 14 are each amended to read as follows:

(1) The legislative transportation committee shall undertake a study and develop recommendations for legislative and executive consideration that will:

- (a) Increase the efficiency and effectiveness of state transportation programs and reduce costs;
- (b) Enhance the accountability and organizational soundness of all transportation modes;
- (c) Encourage better communication between local jurisdictions and the department of transportation in developing engineering plans and subsequent construction projects;

(d) Encourage private sector support and financial participation in project development and construction of transportation projects;

(e) Develop long-range goals that reflect changing technology and state-of-the-art advancements in transportation;

(f) Explore alternatives for the establishment of an integrated and balanced multimodal state-wide transportation system to meet the needs of the 21st century; and

(g) Explore ways to reduce the demand on the transportation system and more effectively use the existing system.

The committee may study other transportation needs and problems and make further recommendations.

(2) The office of financial management and the department of transportation shall provide staff support as required by the legislative transportation committee in developing the recommendations. To the extent permitted by law, all agencies of the state shall cooperate fully with the legislative transportation committee in carrying out its duties under this section.

(3) The legislative transportation committee may receive and expend gifts, grants, and endowments from private sector sources to carry out the purpose of this section.

~~((4) By December 1991 the legislative transportation committee shall submit its preliminary findings and recommendations to the governor, transportation commission, and legislature. A final report shall be submitted by December 1993.))~~

Sec. 89. RCW 46.20.520 and 1987 c 454 s 3 are each amended to read as follows:

(1) The director of licensing shall use moneys designated for the motorcycle safety education account of the highway safety fund to implement by July 1, 1983, a voluntary motorcycle operator training and education program. The director may contract with public and private entities to implement this program.

(2) There is created a motorcycle safety education advisory board to assist the director of licensing in the development of a motorcycle operator training education program. The board shall monitor this program following implementation and report to the director of licensing as necessary with recommendations including, but not limited to, administration, application, and substance of the motorcycle operator training and education program.

The board shall consist of five members appointed by the director of licensing. Three members of the board, one of whom shall be appointed chairperson, shall be active motorcycle riders or members of nonprofit motorcycle organizations which actively support and promote motorcycle safety education. One member shall be a currently employed Washington state patrol motorcycle officer with at least five years experience and at least one year cumulative experience as a motorcycle officer. One member shall be a member of the public. The term of appointment shall be two years. The board shall meet at the call of the director, but not less than two times annually and not less than five times

during its term of appointment, and shall receive no compensation for services but shall be reimbursed for travel expenses while engaged in business of the board in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(3) ~~((The board shall submit a proposed motorcycle operator training and education program to the director and to the legislative transportation committee for review and approval on or before January 1, 1988:~~

~~—(4))~~ The priorities of the program shall be in the following order of priority:

- (a) Public awareness of motorcycle safety.
- (b) Motorcycle safety education programs conducted by public and private entities.
- (c) Classroom and on-cycle training.
- (d) Improved motorcycle operator testing.

**Sec. 90.** RCW 46.61.165 and 1991 sp.s. c 15 s 67 are each amended to read as follows:

The state department of transportation and the local authorities are authorized to reserve all or any portion of any highway under their respective jurisdictions, including any designated lane or ramp, for the exclusive or preferential use of public transportation vehicles or private motor vehicles carrying no fewer than a specified number of passengers when such limitation will increase the efficient utilization of the highway or will aid in the conservation of energy resources. There is hereby appropriated from the transportation fund—state to the department of transportation, program C for the period ending June 30, 1993, an additional \$15 million for the sole purpose of expediting completion of the HOV core lane system. Regulations authorizing such exclusive or preferential use of a highway facility may be declared to be effective at all times or at specified times of day or on specified days. ~~((The department shall evaluate the efficacy of the vehicle occupancy requirements and shall report to the legislative transportation committee by January 1, 1992.))~~

**Sec. 91.** RCW 46.81A.020 and 1993 c 115 s 2 are each amended to read as follows:

(1) The director shall administer and enforce the law pertaining to the motorcycle skills education program as set forth in this chapter.

(2) The director may adopt and enforce reasonable rules that are consistent with this chapter.

(3) The director shall revise the Washington motorcycle safety program to:

(a) Institute a motorcycle skills education course for both novice and advanced motorcycle riders that is a minimum of eight hours and no more than sixteen hours at a cost of no more than fifty dollars;

(b) Encourage the use of loaned or used motorcycles for use in the motorcycle skills education course if the instructor approves them;

(c) Require all instructors to conduct at least three classes in a one-year period to maintain their teaching eligibility;

(d) Encourage the use of radio or intercom equipped helmets when, in the opinion of the instructor, radio or intercom equipped helmets improve the quality of instruction(;

~~—(e) Require a biennial report to be submitted to the legislative transportation committee that includes the following:~~

~~—(i) A narrative history of the program;~~

~~—(ii) Current biennium program appropriations versus actual program expenditures;~~

~~—(iii) Historical enrollment statistics and enrollment forecasts;~~

~~—(iv) Comparative data evaluating motorcycle traffic statistics of program graduates versus nongraduates;~~

~~—(v) Data on the age of the enrollees;~~

~~—(vi) Statistical information regarding general trends in motorcycle ridership in Washington state;~~

~~—(vii) The number of courses offered throughout the biennium;~~

~~—(viii) Information on course dropout rates)).~~

(4) The department shall obtain and compile information from applicants for a motorcycle endorsement regarding whether they have completed a state approved motorcycle skills education course. ~~((This information shall be used for the report required by subsection (3)(e) of this section.))~~

**Sec. 92.** RCW 47.01.250 and 1990 c 266 s 5 are each amended to read as follows:

The chief of the Washington state patrol, the director of the traffic safety commission, the executive director of the county road administration board, and the director of licensing are designated as official consultants to the transportation commission so that the goals and activities of their respective agencies which relate to transportation are fully coordinated with other related responsibilities of the department of transportation. In this capacity, the chief of the Washington state patrol, the director of the traffic safety commission, the executive director of the county road administration board, and the director of licensing shall consult with the transportation commission and the secretary of transportation on the implications and impacts on the transportation related functions and duties of their respective agencies of any proposed comprehensive transportation plan, program, or policy.

In order to develop fully integrated, balanced, and coordinated transportation plans, programs, and budgets the chief of the Washington state patrol, the director of the traffic safety commission, the executive director of the county road administration board, and the director of licensing shall consult with the secretary of transportation on the matter of relative priorities during the development of their respective agencies' plans, programs, and budgets as they pertain to transportation activities. ~~((The secretary of transportation shall provide written comments to the governor and the legislature on the extent to which the state patrol's, the traffic safety commission's, the county road administration board's, and the department of licensing's final plans, programs, and budgets are~~

~~compatible with the priorities established in the department of transportation's final plans, programs, and budgets:)~~

Sec. 93. RCW 47.01.900 and 1996 c 186 s 301 are each amended to read as follows:

(1) All powers, duties, and functions of the state energy office pertaining to the commute trip reduction program are transferred to the department of transportation. All references to the director or the state energy office in the Revised Code of Washington shall be construed to mean the secretary or the department of transportation when referring to the functions transferred in this section.

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

(b) Any appropriations made to the state energy office for carrying out the powers, functions, and duties transferred shall, on July 1, 1996, be transferred and credited to the department of transportation.

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

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

(4) All rules and all pending business before the state energy office pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the department of transportation. All existing contracts and obligations, excluding personnel contracts and obligations, shall remain in full force and shall be performed by the department of transportation.

(5) The transfer of the powers, duties, functions, and personnel of the state energy office shall not affect the validity of any act performed before July 1, 1996.



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

~~((7) The department of transportation shall report to the legislature by December 1, 1996, on the effects of this section.))~~

**Sec. 94.** RCW 47.04.180 and 1989 c 195 s 1 are each amended to read as follows:

On the recommendation of their public works departments or designees, counties or cities can petition the department of transportation to create a "twenty-four hour headlight policy" on state highways in their respective jurisdictions. The department shall develop criteria for approval or disapproval, such as traffic volume, accident statistics, and costs of signs. The department shall notify all counties about this program.

A jurisdiction requesting such a policy shall periodically report to the department regarding its educational efforts. A jurisdiction may petition the department to remove such a policy.

The jurisdiction shall educate its citizens on the "twenty-four hour headlight policy." The department shall place and maintain appropriate signs along the designated highway. Participating jurisdictions shall share in the cost of signing in an amount as determined by the department.

~~((The department shall periodically report to the legislative transportation committee regarding petitions and the subsequent accident statistics. By January 1, 1995, the department shall report to the legislature on the findings of the program.))~~

**Sec. 95.** RCW 47.05.021 and 1993 c 490 s 2 are each amended to read as follows:

(1) The transportation commission is hereby directed to conduct periodic analyses of the entire state highway system, report thereon to the chairs of the transportation committees of the senate and house of representatives, including one copy to the staff of each of the committees, biennially and based thereon, to subdivide, classify, and subclassify according to their function and importance all designated state highways and those added from time to time and periodically review and revise the classifications into the following three functional classes:

(a) The "principal arterial system" shall consist of a connected network of rural arterial routes with appropriate extensions into and through urban areas, including all routes designated as part of the interstate system, which serve corridor movements having travel characteristics indicative of substantial state-wide and interstate travel;

(b) The "minor arterial system" shall, in conjunction with the principal arterial system, form a rural network of arterial routes linking cities and other

activity centers which generate long distance travel, and, with appropriate extensions into and through urban areas, form an integrated network providing interstate and interregional service; and

(c) The "collector system" shall consist of routes which primarily serve the more important intercounty, intracounty, and intraurban travel corridors, collect traffic from the system of local access roads and convey it to the arterial system, and on which, regardless of traffic volume, the predominant travel distances are shorter than on arterial routes.

(2) In making the functional classification the transportation commission shall adopt and give consideration to criteria consistent with this section and federal regulations relating to the functional classification of highways, including but not limited to the following:

(a) Urban population centers within and without the state stratified and ranked according to size;

(b) Important traffic generating economic activities, including but not limited to recreation, agriculture, government, business, and industry;

(c) Feasibility of the route, including availability of alternate routes within and without the state;

(d) Directness of travel and distance between points of economic importance;

(e) Length of trips;

(f) Character and volume of traffic;

(g) Preferential consideration for multiple service which shall include public transportation;

(h) Reasonable spacing depending upon population density; and

(i) System continuity.

(3) The transportation commission shall designate a system of state highways that have state-wide significance. This state-wide system shall include interstate highways and other state-wide principal arterials that are needed to connect major communities across the state and support the state's economy.

(4) The transportation commission shall designate a freight and goods transportation system. This state-wide system shall include state highways, county roads, and city streets. The commission, in cooperation with cities and counties, shall review and make recommendations to the legislature regarding policies governing weight restrictions and road closures which affect the transportation of freight and goods. ~~((The first report is due by December 15, 1993, and biennially thereafter.))~~

Sec. 96. RCW 47.14.050 and 1987 c 267 s 5 are each amended to read as follows:

The department shall:

(1) Give priority to the refinement and modification of right of way procedures and policies dealing with donation;

(2) Reduce or simplify paperwork requirements resulting from right of way procurement;

(3) Increase communication and education efforts as a means to solicit and encourage voluntary right of way donations;

(4) Enhance communication and coordination with local governments through agreements of understanding that address state acceptance of right of way donations secured under zoning, use permits, subdivision, and associated police power authority of local government((;

~~—(5) Report to the legislative transportation committee by January 31, 1988, on its efforts under this section)).~~

**Sec. 97.** RCW 47.24.010 and 1979 ex.s. c 86 s 2 are each amended to read as follows:

The transportation commission shall determine what streets, together with bridges thereon and wharves necessary for use for ferrriage of motor vehicle traffic in connection with such streets, if any, in any incorporated cities and towns shall form a part of the route of state highways and between the first and fifteenth days of July of any year the department of transportation shall ~~((certify to the clerk of each city or town;))~~ identify by brief description, the streets, together with the bridges thereon and wharves, if any, in such city or town which are designated as forming a part of the route of any state highway; and all such streets, including curbs and gutters and street intersections and such bridges and wharves, shall thereafter be a part of the state highway system and as such shall be constructed and maintained by the department of transportation from any state funds available therefor: PROVIDED, That the responsibility for the construction and maintenance of any such street together with its appurtenances may be returned to a city or a town upon certification by the department of transportation to the clerk of any city or town that such street, or portion thereof, is no longer required as a part of the state highway system: PROVIDED FURTHER, That any such certification that a street, or portion thereof, is no longer required as a part of the state highway system shall be made between the first and fifteenth of July following the determination by the department that such street or portion thereof is no longer required as a part of the state highway system, but this shall not prevent the department and any city or town from entering into an agreement that a city or town will accept responsibility for such a street or portion thereof at some time other than between the first and fifteenth of July of any year.

**Sec. 98.** RCW 48.41.070 and 1989 c 121 s 4 are each amended to read as follows:

The pool shall be subject to examination by the commissioner as provided under chapter 48.03 RCW. The board of directors shall submit to the commissioner, not later than one hundred twenty days after the end of each accounting year, a financial report for the year in a form approved by the commissioner. ~~((The board of directors shall further report to the appropriate standing committees of each house of the legislature by March 1st of each year.))~~

**Sec. 99.** RCW 49.30.005 and 1991 c 31 s 1 are each amended to read as follows:

~~((H))~~ It is the intent of the legislature that the department assist agricultural employers in mitigating the costs of the state's unemployment insurance program. The department shall work with members of the agricultural community to: Improve understanding of the program's operation; increase compliance with work-search requirements; provide prompt notification of potential claims against an employer's experience rating; inform employers of their rights; inform employers of the actions necessary to appeal a claim and to protect their rights; and reduce claimant and employer fraud. These efforts shall include:

~~((a))~~ (1) Conducting employer workshops and community seminars;

~~((b))~~ (2) Developing new educational materials; and

~~((a))~~ (3) Developing forms that use lay language.

~~((2))~~ The department shall report to the appropriate standing committees of the legislature by January 10, 1990, 1991, and 1992 and include a description of the activities of the department to carry out the intents of this section and provide quantitative data where possible on the effectiveness of the activities undertaken by the department to comply with the intents of this section during the previous calendar year.)

**Sec. 100.** RCW 50.44.035 and 1983 1st ex.s. c 23 s 22 are each amended to read as follows:

(1) Any county, city, or town not electing to make payments in lieu of contributions shall pay a "local government tax." Taxes paid under this section shall be paid into an administratively identifiable account in the unemployment compensation fund. This account shall be self-sustaining. For calendar years 1978 and 1979 all such employers shall pay local government tax at the rate of one and one-quarter percent of all remuneration paid by the governmental unit for services in its employment. For each year after 1979 each such employer's rate of tax shall be determined in accordance with this section: PROVIDED, HOWEVER, That whenever it appears to the commissioner that the anticipated benefit payments from the account would jeopardize reasonable reserves in this identifiable account the commissioner may at the commencement of any calendar quarter, impose an emergency excess tax of not more than one percent of remuneration paid by the participating governmental units which "excess tax" shall be paid in addition to the applicable rate computed pursuant to this section until the calendar year following the next September 1st.

(2) A reserve account shall be established for each such employer.

(a) The "reserve account" of each such employer shall be credited with tax amounts paid and shall be charged with benefit amounts charged in accordance with the formula set forth in RCW 50.44.060 as now or hereafter amended except that such employer's account shall be charged for the full amount of extended benefits so attributable for weeks of unemployment commencing after January 1, 1979. Such credits and charges shall be cumulative from January 1, 1978.

(b) After the cutoff date, the "reserve ratio" of each such employer shall be computed by dividing its reserve account balance as of the computation date by the total remuneration paid during the preceding calendar year for services in its

employment. This division shall be carried to four decimal places, with the remaining fraction, if any, disregarded.

(3) A "benefit cost ratio" for each such employer shall be computed by dividing its total benefit charges during the thirty-six months ending on June 30<sup>th</sup> by its total remuneration during the three preceding calendar years: PROVIDED, That after August 31<sup>st</sup> in 1979 each employer's total benefit charges for the twelve months ending on June 30<sup>th</sup> shall be divided by its total remuneration paid in the last three quarters of calendar year 1978; and after August 31<sup>st</sup> in 1980 each employer's total benefit charges for the twenty-four months ending June 30<sup>th</sup> shall be divided by its total remuneration paid in the last three calendar quarters of 1978 and the four calendar quarters of 1979. Such computations shall be carried to four decimal places, with the remaining fraction, if any, disregarded.

(4) For each such employer its benefit cost ratio shall be subtracted from its reserve ratio. One-third of the resulting amount shall be subtracted from its benefit cost ratio. The resulting figure, expressed as a percentage and rounded to the nearest tenth of one percent, shall become its local government tax rate for the following rate year. For the rate year 1980 no tax rate shall be less than 0.6 percent nor more than 2.2 percent. For 1981 no tax rate shall be less than 0.4 percent nor more than 2.6 percent. For years after 1981 no tax rate shall be less than 0.2 percent or more than 3.0 percent. No individual rate shall be increased any more than 1.0 percent from one rate year to the next.

(5) Any county, city, or town electing participation under this section at any time after December 15, 1977, shall be assigned a tax rate of one and one-quarter percent of total remuneration for the first eight quarters of the participation.

(6) ~~((Each year after 1980 the commissioner shall review the local government tax system and make recommendations to the legislature for changes in said system.~~

—(7)) "Local government tax" shall be deemed to be "contributions" to the extent that such usage is consistent with the purposes of this title. Such construction shall include but not be limited to those portions of this title and the rules ~~((and regulations))~~ enacted pursuant thereto dealing with assessments, interest, penalties, liens, collection procedures and remedies, administrative and judicial review, and the imposition of administrative, civil, and criminal sanctions.

**Sec. 101.** RCW 50.60.901 and 1983 c 207 s 14 are each amended to read as follows:

The department shall adopt such rules as are necessary to carry out the purposes of this act. ~~((The department shall make a report to the legislature by January 1, 1984 which describes the implementation of this act.))~~

**Sec. 102.** RCW 50.62.040 and 1987 c 284 s 4 are each amended to read as follows:

(1) Each year the employment security department (~~shall~~) may publish an annual report on the unemployed based on research conducted on the continuous (~~usage {wage}~~) wage and benefit history and other sources that identifies:

(a) The demographic groups of unemployment insurance claimants that experience the greatest difficulty finding new employment with wages comparable to their prelayoff earnings;

(b) The demographic groups of unemployment insurance claimants that have the highest rates of failure to find unemployment insurance covered-employment after a layoff;

(c) The demographic, industry, and employment characteristics of the unemployment insurance claimant population most closely associated with the exhaustion of an unemployment claim;

(d) The demographic, industry, and employment characteristics of those locked-out workers who are eligible for unemployment compensation under RCW 50.20.090; and

(e) The demographic groups which are defined as the "long-term unemployed" for purposes of this chapter. This listing shall be updated each year.

(2) The employment security department shall continue to fund the continuing wage and benefit history at a level necessary to produce the annual report described in subsection (1) of this section.

**Sec. 103.** RCW 50.72.070 and 1994 sp.s. c 3 s 7 are each amended to read as follows:

(1) An applicant selected for funding under this chapter shall provide the department information on program and participant accomplishments. The information shall be provided in progress and final reports as requested by the department.

(2) (~~The department shall prepare an initial evaluation report, which shall be made available to the governor and appropriate legislative committees, on or before December 1, 1995, on the progress of individual programs funded under this chapter.~~) A final evaluation report shall be prepared on individual programs at the time of their completion. The final evaluation report shall include, but is not limited to, information on the effectiveness of the program, the status of program participants, and recommendations on program administration at the state and local level.

**Sec. 104.** RCW 51.36.080 and 1993 c 159 s 2 are each amended to read as follows:

(1) All fees and medical charges under this title shall conform to the fee schedule established by the director and shall be paid within sixty days of receipt by the department of a proper billing in the form prescribed by department rule or sixty days after the claim is allowed by final order or judgment, if an otherwise proper billing is received by the department prior to final adjudication of claim allowance. The department shall pay interest at the rate of one percent per month,

but at least one dollar per month, whenever the payment period exceeds the applicable sixty-day period on all proper fees and medical charges.

Beginning in fiscal year 1987, interest payments under this subsection may be paid only from funds appropriated to the department for administrative purposes. ~~((A record of payments made under this subsection shall be submitted twice yearly to the commerce and labor committees of the senate and the house of representatives and to the ways and means committees of the senate and the house of representatives.))~~

Nothing in this section may be construed to require the payment of interest on any billing, fee, or charge if the industrial insurance claim on which the billing, fee, or charge is predicated is ultimately rejected or the billing, fee, or charge is otherwise not allowable.

In establishing fees for medical and other health care services, the director shall consider the director's duty to purchase health care in a prudent, cost-effective manner without unduly restricting access to necessary care by persons entitled to the care. With respect to workers admitted as hospital inpatients on or after July 1, 1987, the director shall pay for inpatient hospital services on the basis of diagnosis-related groups, contracting for services, or other prudent, cost-effective payment method, which the director shall establish by rules adopted in accordance with chapter 34.05 RCW.

(2) The director may establish procedures for selectively or randomly auditing the accuracy of fees and medical billings submitted to the department under this title.

**Sec. 105.** RCW 59.22.090 and 1991 c 327 s 4 are each amended to read as follows:

(1) A manufactured housing task force is established to study and make recommendations concerning the structure state government should use to regulate manufactured housing in this state. In conducting this study, the task force shall review the structures used in other states, including those states with a commission structure. The task force shall consider the report prepared by the department of licensing, the department of labor and industries, and the department of community, trade, and economic development on consolidating mobile home-related functions in conducting its study. The task force may not consider any form of mobile home rent control, but shall consider mobile home park siting and density regulatory issues.

~~(2) ((The task force shall submit a final report containing its findings and recommendations to the house of representatives housing committee and the senate commerce and labor committee by December 1, 1992.))~~ The task force shall terminate on December 31, 1992.

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

(a) Two members of the house of representatives appointed by the speaker of the house of representatives, from different political caucuses;

(b) Two members of the senate appointed by the president of the senate, from different political caucuses;

(c) Two members who represent mobile home park owners, appointed by the governor;

(d) Two members who represent mobile home owners, appointed by the governor;

(e) One member who represents mobile home manufacturers, appointed by the governor;

(f) One member who represents mobile home dealers, appointed by the governor;

(g) One member who represents mobile home transporters, appointed by the governor;

(h) One member who represents local building officials, appointed by the governor;

(i) One member who is either an elected or appointed government official of a county with a population of one hundred thousand or more persons, appointed by the governor;

(j) One member who is either an elected or appointed government official of a county with a population of less than one hundred thousand persons, appointed by the governor;

(k) One member who is either an elected or appointed government official of a city with a population of thirty-five thousand persons, appointed by the governor;

(l) One member who is either an elected or appointed government official of a city with a population of less than thirty-five thousand persons, appointed by the governor;

(m) One member who represents local health officials, appointed by the governor; and

(n) The director, or the director's designee from the department of community, trade, and economic development, the department of licensing, the department of labor and industries, and the attorney general's office. The designees shall be nonvoting, ex officio members of the task force.

(4) The members of the task force shall select the chair or co-chairs of the task force.

(5) Staff assistance for the task force will be provided by legislative staff and staff from the agencies or offices listed in subsection (3)(n) of this section.

**Sec. 106.** RCW 67.70.050 and 1987 c 511 s 3 and 1987 c 505 s 57 are each reenacted and amended to read as follows:

There is created the office of director of the state lottery. The director shall be appointed by the governor with the consent of the senate. The director shall serve at the pleasure of the governor and shall receive such salary as is determined by the governor, but in no case may the director's salary be more than ninety percent of the salary of the governor. The director shall:

(1) Supervise and administer the operation of the lottery in accordance with the provisions of this chapter and with the rules of the commission.



(2) Appoint such deputy and assistant directors as may be required to carry out the functions and duties of his office: PROVIDED, That the provisions of the state civil service law, chapter 41.06 RCW, shall not apply to such deputy and assistant directors.

(3) Appoint such professional, technical, and clerical assistants and employees as may be necessary to perform the duties imposed by this chapter: PROVIDED, That the provisions of the state civil service law, chapter 41.06 RCW, shall not apply to such employees as are engaged in undercover audit or investigative work or security operations but shall apply to other employees appointed by the director, except as provided for in subsection (2) of this section.

(4) In accordance with the provisions of this chapter and the rules of the commission, license as agents to sell or distribute lottery tickets such persons as in his opinion will best serve the public convenience and promote the sale of tickets or shares. The director may require a bond from any licensed agent, in such amount as provided in the rules of the commission. Every licensed agent shall prominently display his license, or a copy thereof, as provided in the rules of the commission. License fees may be established by the commission, and, if established, shall be deposited in the state lottery account created by RCW 67.70.230.

(5) Confer regularly as necessary or desirable with the commission on the operation and administration of the lottery; make available for inspection by the commission, upon request, all books, records, files, and other information and documents of the lottery; and advise the commission and recommend such matters as the director deems necessary and advisable to improve the operation and administration of the lottery.

(6) Subject to the applicable laws relating to public contracts, enter into contracts for the operation of the lottery, or any part thereof, and into contracts for the promotion of the lottery. No contract awarded or entered into by the director may be assigned by the holder thereof except by specific approval of the commission: PROVIDED, That nothing in this chapter authorizes the director to enter into public contracts for the regular and permanent administration of the lottery after the initial development and implementation.

(7) Certify quarterly to the state treasurer and the commission a full and complete statement of lottery revenues, prize disbursements, and other expenses for the preceding quarter.

~~(8) ((Report immediately to the governor and the legislature any matters which require immediate changes in the laws of this state in order to prevent abuses and evasions of this chapter or rules promulgated thereunder or to rectify undesirable conditions in connection with the administration or operation of the lottery.~~

—(9)) Carry on a continuous study and investigation of the lottery throughout the state: (a) For the purpose of ascertaining any defects in this chapter or in the rules issued thereunder by reason whereof any abuses in the administration and operation of the lottery or any evasion of this chapter or the rules may arise or be

practiced, (b) for the purpose of formulating recommendations for changes in this chapter and the rules promulgated thereunder to prevent such abuses and evasions, (c) to guard against the use of this chapter and the rules issued thereunder as a cloak for the carrying on of professional gambling and crime, and (d) to ~~((insure))~~ ensure that this chapter and rules shall be in such form and be so administered as to serve the true purposes of this chapter.

~~((10))~~ (9) Make a continuous study and investigation of: (a) The operation and the administration of similar laws which may be in effect in other states or countries, (b) the operation of an additional game or games for the benefit of a particular program or purpose, (c) any literature on the subject which from time to time may be published or available, (d) any federal laws which may affect the operation of the lottery, and (e) the reaction of the citizens of this state to existing and potential features of the lottery with a view to recommending or effecting changes that will tend to serve the purposes of this chapter.

~~((11))~~ (10) Have all enforcement powers granted in chapter 9.46 RCW.

~~((12))~~ (11) Perform all other matters and things necessary to carry out the purposes and provisions of this chapter.

Sec. 107. RCW 69.43.010 and 1988 c 147 s 1 are each amended to read as follows:

(1) Beginning July 1, 1988, a report to the state board of pharmacy shall be submitted in accordance with this chapter by a manufacturer, retailer, or other person who sells, transfers, or otherwise furnishes to any person in this state any of the following substances or their salts or isomers:

- (a) Anthranilic acid;
- (b) Barbituric acid;
- (c) Chlorephedrine;
- (d) Diethyl malonate;
- (e) D-lysergic acid;
- (f) Ephedrine;
- (g) Ergotamine tartrate;
- (h) Ethylamine;
- (i) Ethyl malonate;
- (j) Ethylephedrine;
- (k) Lead acetate;
- (l) Malonic acid;
- (m) Methylamine;
- (n) Methylformamide;
- (o) Methylephedrine;
- (p) Methylpseudoephedrine;
- (q) N-acetylanthranilic acid;
- (r) Norpseudoephedrine;
- (s) Phenylacetic acid;
- (t) Phenylpropanolamine;
- (u) Piperidine;

(v) Pseudoephedrine; and

(w) Pyrrolidine.

(2) The state board of pharmacy shall administer this chapter and may, by rule adopted pursuant to chapter 34.05 RCW, add a substance to or remove a substance from the list in subsection (1) of this section. In determining whether to add or remove a substance, the board shall consider the following:

(a) The likelihood that the substance is useable as a precursor in the illegal production of a controlled substance as defined in chapter 69.50 RCW;

(b) The availability of the substance;

(c) The relative appropriateness of including the substance in this chapter or in chapter 69.50 RCW; and

(d) The extent and nature of legitimate uses for the substance.

~~(3) ((On or before December 1 of each year, the board shall inform the committees of reference of the legislature of the substances added, deleted, or changed in subsection (1) of this section and include an explanation of these actions:~~

~~—(4))~~(a) Beginning on July 1, 1988, any manufacturer, wholesaler, retailer, or other person shall, before selling, transferring, or otherwise furnishing any substance specified in subsection (1) of this section to a person in this state, require proper identification from the purchaser.

(b) For the purposes of this subsection, "proper identification" means, in the case of a face-to-face purchase, a motor vehicle operator's license or other official state-issued identification of the purchaser containing a photograph of the purchaser, and includes the residential or mailing address of the purchaser, other than a post office box number, the motor vehicle license number of any motor vehicle owned or operated by the purchaser, a letter of authorization from any business for which any substance specified in subsection (1) of this section is being furnished, which includes the business license number and address of the business, a description of how the substance is to be used, and the signature of the purchaser. The person selling, transferring, or otherwise furnishing any substance specified in subsection (1) of this section shall affix his or her signature as a witness to the signature and identification of the purchaser. The state board of pharmacy shall provide by rule for the proper identification of purchasers in other than face-to-face purchases.

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

~~((5))~~ (4) Beginning on July 1, 1988, any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance specified in subsection (1) of this section to a person in this state shall, not less than twenty-one days before delivery of the substance, submit a report of the transaction, which includes the identification information specified in subsection ~~((4))~~ (3) of this section to the state board of pharmacy. However, the state board of pharmacy may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient

involving the same substance if the state board of pharmacy determines that either of the following exist:

(a) A pattern of regular supply of the substance exists between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes such substance and the recipient of the substance; or

(b) The recipient has established a record of using the substance for lawful purposes.

~~((6))~~ (5) Any person specified in subsection ~~((5))~~ (4) of this section who does not submit a report as required by that subsection is guilty of a gross misdemeanor.

**Sec. 108.** RCW 69.50.201 and 1993 c 187 s 2 are each amended to read as follows:

(a) The state board of pharmacy shall enforce this chapter and may add substances to or delete or reschedule substances listed in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, or 69.50.212 pursuant to the procedures of chapter 34.05 RCW.

(1) In making a determination regarding a substance, the board shall consider the following:

(i) the actual or relative potential for abuse;

(ii) the scientific evidence of its pharmacological effect, if known;

(iii) the state of current scientific knowledge regarding the substance;

(iv) the history and current pattern of abuse;

(v) the scope, duration, and significance of abuse;

(vi) the risk to the public health;

(vii) the potential of the substance to produce psychic or physiological dependence liability; and

(viii) whether the substance is an immediate precursor of a controlled substance.

(2) The board may consider findings of the federal Food and Drug Administration or the Drug Enforcement Administration as prima facie evidence relating to one or more of the determinative factors.

~~(b) ((On or before December 1 of each year, the board shall inform the committees of reference of the legislature of the controlled substances added, deleted, or changed on the schedules specified in this chapter and which includes an explanation of these actions.~~

~~(e))~~ After considering the factors enumerated in subsection (a) of this section, the board shall make findings with respect thereto and adopt and cause to be published a rule controlling the substance upon finding the substance has a potential for abuse.

~~((d))~~ (c) The board, without regard to the findings required by subsection (a) of this section or RCW 69.50.203, 69.50.205, 69.50.207, 69.50.209, and 69.50.211 or the procedures prescribed by subsections (a) and ~~((e))~~ (b) of this section, may place an immediate precursor in the same schedule in which the controlled substance of which it is an immediate precursor is placed or in any

other schedule. If the board designates a substance as an immediate precursor, substances that are precursors of the controlled precursor are not subject to control solely because they are precursors of the controlled precursor.

~~((e))~~ **(d)** If a substance is designated, rescheduled, or deleted as a controlled substance under federal law, the board shall similarly control the substance under this chapter after the expiration of thirty days from the date of publication in the federal register of a final order designating the substance as a controlled substance or rescheduling or deleting the substance or from the date of issuance of an order of temporary scheduling under Section 508 of the federal Dangerous Drug Diversion Control Act of 1984, 21 U.S.C. Sec. 811(h), unless within that thirty-day period, the board or an interested party objects to inclusion, rescheduling, temporary scheduling, or deletion. If no objection is made, the board shall adopt and cause to be published, without the necessity of making determinations or findings as required by subsection (a) of this section or RCW 69.50.203, 69.50.205, 69.50.207, 69.50.209, and 69.50.211, a final rule, for which notice of proposed rule making is omitted, designating, rescheduling, temporarily scheduling, or deleting the substance. If an objection is made, the board shall make a determination with respect to the designation, rescheduling, or deletion of the substance as provided by subsection (a) of this section. Upon receipt of an objection to inclusion, rescheduling, or deletion under this chapter by the board, the board shall publish notice of the receipt of the objection, and control under this chapter is stayed until the board adopts a rule as provided by subsection (a) of this section.

~~((f))~~ **(e)** The board, by rule and without regard to the requirements of subsection (a) of this section, may schedule a substance in Schedule I regardless of whether the substance is substantially similar to a controlled substance in Schedule I or II if the board finds that scheduling of the substance on an emergency basis is necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under Section 505 of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 355. Upon receipt of notice under RCW 69.50.214, the board shall initiate scheduling of the controlled substance analog on an emergency basis pursuant to this subsection. The scheduling of a substance under this subsection expires one year after the adoption of the scheduling rule. With respect to the finding of an imminent hazard to the public safety, the board shall consider whether the substance has been scheduled on a temporary basis under federal law or factors set forth in subsection (a)(1)(iv), (v), and (vi) of this section, and may also consider clandestine importation, manufacture, or distribution, and, if available, information concerning the other factors set forth in subsection (a)(1) of this section. A rule may not be adopted under this subsection until the board initiates a rule-making proceeding under subsection (a) of this section with respect to the substance. A rule adopted under this subsection must be vacated upon the conclusion of the rule-making proceeding initiated under subsection (a) of this section with respect to the substance.

(g) Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Titles 66 and 26 RCW.

**Sec. 109.** RCW 69.50.525 and 1993 c 187 s 20 are each amended to read as follows:

(a) As used in this section, "diversion" means the transfer of any controlled substance from a licit to an illicit channel of distribution or use.

(b) The department shall regularly prepare and make available to other state regulatory, licensing, and law enforcement agencies a report on the patterns and trends of actual distribution, diversion, and abuse of controlled substances.

(c) The department shall enter into written agreements with local, state, and federal agencies for the purpose of improving identification of sources of diversion and to improve enforcement of and compliance with this chapter and other laws and regulations pertaining to unlawful conduct involving controlled substances. An agreement must specify the roles and responsibilities of each agency that has information or authority to identify, prevent, and control drug diversion and drug abuse. The department shall convene periodic meetings to coordinate a state diversion prevention and control program. The department shall arrange for cooperation and exchange of information among agencies and with neighboring states and the federal government.

~~((d) The department shall report to the governor and to the presiding officer of each house of the legislature on the outcome of this program with respect to its effects on distribution and abuse of controlled substances, including recommendations for improving control and prevention of the diversion of controlled substances of this state.))~~

**Sec. 110.** RCW 70.105.160 and 1984 c 254 s 2 are each amended to read as follows:

The department shall conduct a study to determine the best management practices for categories of waste for the priority waste management methods established in RCW 70.105.150, with due consideration in the course of the study to sound environmental management and available technology. As an element of the study, the department shall review methods that will help achieve the priority of RCW 70.105.150(1)(a), waste reduction. Before issuing any proposed ~~((regulations))~~ rules, the department shall conduct public hearings regarding the best management practices for the various waste categories studied by the department. After conducting the study, the department shall prepare new rules or modify existing rules as appropriate to promote implementation of the priorities established in RCW 70.105.150 for management practices which assure use of sound environmental management techniques and available technology. The preliminary study shall be completed by July 1, 1986, and the rules shall be adopted by July 1, 1987. The solid waste advisory committee shall review the studies and the new or modified rules ~~((and submit recommendations to the legislature by January 1, 1988, regarding policy options (such as fee incentives,~~

disposal bans, etc.) that will be used to reduce the production of dangerous and extremely hazardous waste in Washington state)).

The studies shall be updated at least once every five years. The funding for these studies shall be from the hazardous waste control and elimination account, subject to legislative appropriation.

**Sec. 111.** RCW 70.112.050 and 1975 1st ex.s. c 108 s 5 are each amended to read as follows:

The advisory board shall advise the dean and the chairman of the department of family medicine in the implementation of the educational programs provided for in this chapter; including, but not limited to, the selection of the areas within the state where affiliate residency programs shall exist, the allocation of funds appropriated under this chapter, and the procedures for review and evaluation of the residency programs. ~~((On or before January 15 of each year the advisory board shall provide the governor and the legislature with the report on the status of the state-wide family practice residency program.))~~

**Sec. 112.** RCW 70.119A.160 and 1995 c 376 s 4 are each amended to read as follows:

The department shall create a water supply advisory committee. Membership on the committee shall reflect a broad range of interests in the regulation of public water supplies, including water utilities of all sizes, local governments, business groups, special purpose districts, local health jurisdictions, other state and federal agencies, financial institutions, environmental organizations, the legislature, and other groups substantially affected by the department's role in implementing state and federal requirements for public water systems. Members shall be appointed for fixed terms of no less than two years, and may be reappointed. Any members of an existing advisory committee to the drinking water program may remain as members of the water supply advisory committee. The committee shall provide advice to the department on the organization, functions, service delivery methods, and funding of the drinking water program. The committee shall also review the adequacy and necessity of the current and prospective funding for the drinking water program, and the results of the committees' review shall be forwarded to the department ~~((for inclusion in a report to the appropriate standing committees of the legislature no later than November 1, 1996)).~~ The report shall include a discussion of the extent to which the drinking water program has progressed toward achieving the objectives of the public health improvement plan, and an assessment of any changes to the program necessitated by modifications to the federal safe drinking water act.

**Sec. 113.** RCW 70.129.160 and 1994 c 214 s 18 are each amended to read as follows:

The long-term care ombudsman shall monitor implementation of this chapter and determine the degree to which veterans' homes, nursing facilities, adult family homes, and boarding homes ensure that residents are able to exercise their rights. The long-term care ombudsman shall consult with the departments of

health and social and health services, long-term care facility organizations, resident groups, and senior and ~~((disable--{disabled}))~~ disabled citizen organizations ~~((and report to the house of representatives committee on health care and the senate committee on health and human services concerning the implementation of this chapter with any applicable recommendations by July 1, 1995)).~~

**Sec. 114.** RCW 70.148.020 and 1991 sp.s. c 13 s 90 are each amended to read as follows:

(1) The pollution liability insurance program trust account is established in the custody of the state treasurer. All funds appropriated for this chapter and all premiums collected for reinsurance shall be deposited in the account. Expenditures from the account shall be used exclusively for the purposes of this chapter including payment of costs of administering the pollution liability insurance and underground storage tank community assistance programs. The account is subject to allotment procedures under chapter 43.88 RCW. Expenditures for payment of the costs of administering the program may be made only after appropriation by statute. No appropriation is required for other expenditures from the account.

(2) Each calendar quarter, the director shall report to the insurance commissioner ~~((and the chairs of the senate ways and means, senate financial institutions, house of representatives revenue, and house of representatives financial institutions committees,))~~ the loss and surplus reserves required for the calendar quarter. The director shall notify the department of revenue of this amount by the fifteenth day of each calendar quarter.

(3) Each calendar quarter the director shall ~~((report to the chairs of the senate ways and means, senate financial institutions, house of representatives revenue, and house of representatives financial institutions and insurance committees,))~~ determine the amount of reserves necessary to fund commitments made to provide financial assistance under RCW 70.148.130 to the extent that the financial assistance reserves do not jeopardize the operations and liabilities of the pollution liability insurance program. The director shall notify the department of revenue of this amount by the fifteenth day of each calendar quarter. The director may immediately establish an initial financial assistance reserve of five million dollars from available revenues. The director may not expend more than fifteen million dollars for the financial assistance program.

**Sec. 115.** RCW 70.148.050 and 1995 c 12 s 1 are each amended to read as follows:

The director has the following powers and duties:

(1) To design and from time to time revise a reinsurance contract providing coverage to an insurer meeting the requirements of this chapter. Before initially entering into a reinsurance contract, the director shall ~~((provide a report to the chairs of the senate ways and means, senate financial institutions, house of representatives revenue, and house of representatives financial institutions~~



~~committees and shall include~~) prepare an actuarial report describing the various reinsurance methods considered by the director and describing each method's costs. In designing the reinsurance contract the director shall consider common insurance industry reinsurance contract provisions and shall design the contract in accordance with the following guidelines:

(a) The contract shall provide coverage to the insurer for the liability risks of owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action that are underwritten by the insurer.

(b) In the event of an insolvency of the insurer, the reinsurance contract shall provide reinsurance payable directly to the insurer or to its liquidator, receiver, or successor on the basis of the liability of the insurer in accordance with the reinsurance contract. In no event may the program be liable for or provide coverage for that portion of any covered loss that is the responsibility of the insurer whether or not the insurer is able to fulfill the responsibility.

(c) The total limit of liability for reinsurance coverage shall not exceed one million dollars per occurrence and two million dollars annual aggregate for each policy underwritten by the insurer less the ultimate net loss retained by the insurer as defined and provided for in the reinsurance contract.

(d) Disputes between the insurer and the insurance program shall be settled through arbitration.

(2) To design and implement a structure of periodic premiums due the director from the insurer that takes full advantage of revenue collections and projected revenue collections to ensure affordable premiums to the insured consistent with sound actuarial principles.

(3) To periodically review premium rates for reinsurance to determine whether revenue appropriations supporting the program can be reduced without substantially increasing the insured's premium costs.

(4) To solicit bids from insurers and select an insurer to provide pollution liability insurance to owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action.

(5) To monitor the activities of the insurer to ensure compliance with this chapter and protect the program from excessive loss exposure resulting from claims mismanagement by the insurer.

(6) To monitor the success of the program and periodically make such reports and recommendations to the legislature as the director deems appropriate, and to annually publish a financial report on the pollution liability insurance program trust account showing, among other things, administrative and other expenses paid from the fund.

(7) To annually report the financial and loss experience of the insurer as to policies issued under the program and the financial and loss experience of the program to the legislature.

(8) To evaluate the effects of the program upon the private market for liability insurance for owners and operators of underground storage tanks and

make recommendations to the legislature on the necessity for continuing the program to ensure availability of such coverage.

(9) To enter into contracts with public and private agencies to assist the director in his or her duties to design, revise, monitor, and evaluate the program and to provide technical or professional assistance to the director.

(10) To examine the affairs, transactions, accounts, records, documents, and assets of insurers as the director deems advisable.

**Sec. 116.** RCW 70.162.050 and 1989 c 315 s 6 are each amended to read as follows:

(1) The superintendent of public instruction may implement a model indoor air quality program in a school district selected by the superintendent.

(2) The superintendent shall ensure that the model program includes:

(a) An initial evaluation by an indoor air quality expert of the current indoor air quality in the school district. The evaluation shall be completed within ninety days after the beginning of the school year;

(b) Establishment of procedures to ensure the maintenance and operation of any ventilation and filtration system used. These procedures shall be implemented within thirty days of the initial evaluation;

(c) A reevaluation by an indoor air quality expert, to be conducted approximately two hundred seventy days after the initial evaluation; and

(d) The implementation of other procedures or plans that the superintendent deems necessary to implement the model program.

~~((3) The superintendent shall make a report by December 1, 1990, to the appropriate committees of the legislature that includes:~~

~~— (a) A summary and evaluation of the model program;~~

~~— (b) An evaluation of the adequacy of mechanical ventilation and filtration systems used in public schools; and~~

~~— (c) Recommendations to ensure acceptable indoor air quality in all public schools:))~~

**Sec. 117.** RCW 70.168.030 and 1988 c 183 s 3 are each amended to read as follows:

(1) Upon the recommendation of the steering committee, the director of the office of financial management shall contract with an independent party for an analysis of the state's trauma system.

(2) The analysis shall contain at a minimum, the following:

(a) The identification of components of a functional state-wide trauma care system, including standards; and

(b) An assessment of the current trauma care program compared with the functional state-wide model identified in subsection (a) of this section, including an analysis of deficiencies and reasons for the deficiencies.

(3) The analysis shall provide a design for a state-wide trauma care system based on the findings of the committee under subsection (2) of this section, with

a plan for phased-in implementation. The plan shall include, at a minimum, the following:

- (a) Responsibility for implementation;
- (b) Administrative authority at the state, regional, and local levels;
- (c) Facility, equipment, and personnel standards;
- (d) Triage and care criteria;
- (e) Data collection and use;
- (f) Cost containment strategies;
- (g) System evaluation; and
- (h) Projected costs.

~~((4) The steering committee shall submit to the appropriate committees of the legislature the results of the identification and assessment phase of the analysis by July 1, 1989, and the design plan by January 1, 1990.))~~

**Sec. 118.** RCW 70.170.060 and 1989 1st ex.s. c 9 s 506 are each amended to read as follows:

(1) No hospital or its medical staff shall adopt or maintain admission practices or policies which result in:

(a) A significant reduction in the proportion of patients who have no third-party coverage and who are unable to pay for hospital services;

(b) A significant reduction in the proportion of individuals admitted for inpatient hospital services for which payment is, or is likely to be, less than the anticipated charges for or costs of such services; or

(c) The refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital.

(2) No hospital shall adopt or maintain practices or policies which would deny access to emergency care based on ability to pay. No hospital which maintains an emergency department shall transfer a patient with an emergency medical condition or who is in active labor unless the transfer is performed at the request of the patient or is due to the limited medical resources of the transferring hospital. Hospitals must follow reasonable procedures in making transfers to other hospitals including confirmation of acceptance of the transfer by the receiving hospital.

(3) The department shall develop definitions by rule, as appropriate, for subsection (1) of this section and, with reference to federal requirements, subsection (2) of this section. The department shall monitor hospital compliance with subsections (1) and (2) of this section. The department shall report ~~((to the legislature and the governor on hospital compliance with these requirements and shall report))~~ individual instances of possible noncompliance to the state attorney general or the appropriate federal agency.

(4) The department shall establish and maintain by rule, consistent with the definition of charity care in RCW 70.170.020, the following:

(a) Uniform procedures, data requirements, and criteria for identifying patients receiving charity care;

(b) A definition of residual bad debt including reasonable and uniform standards for collection procedures to be used in efforts to collect the unpaid portions of hospital charges that are the patient's responsibility.

(5) For the purpose of providing charity care, each hospital shall develop, implement, and maintain a charity care policy which, consistent with subsection (1) of this section, shall enable people below the federal poverty level access to appropriate hospital-based medical services, and a sliding fee schedule for determination of discounts from charges for persons who qualify for such discounts by January 1, 1990. The department shall develop specific guidelines to assist hospitals in setting sliding fee schedules required by this section. All persons with family income below one hundred percent of the federal poverty standard shall be deemed charity care patients for the full amount of hospital charges, provided that such persons are not eligible for other private or public health coverage sponsorship. Persons who may be eligible for charity care shall be notified by the hospital.

(6) Each hospital shall make every reasonable effort to determine the existence or nonexistence of private or public sponsorship which might cover in full or part the charges for care rendered by the hospital to a patient; the family income of the patient as classified under federal poverty income guidelines; and the eligibility of the patient for charity care as defined in this chapter and in accordance with hospital policy. An initial determination of sponsorship status shall precede collection efforts directed at the patient.

(7) The department shall monitor the distribution of charity care among hospitals, with reference to factors such as relative need for charity care in hospital service areas and trends in private and public health coverage. The department shall ~~((report to the legislature and executive))~~ prepare reports that identify any problems in distribution which are in contradiction of the intent of this chapter. The report shall include an assessment of the effects of the provisions of this chapter on access to hospital and health care services, as well as an evaluation of the contribution of all purchasers of care to hospital charity care.

(8) The department shall issue a report on the subjects addressed in this section at least annually, with the first report due on July 1, 1990.

**Sec. 119.** RCW 70.175.100 and 1989 1st ex.s. c 9 s 710 are each amended to read as follows:

(1) The department shall establish and adopt such standards and ~~((regulations))~~ rules pertaining to the construction, maintenance, and operation of a rural health care facility and the scope of health care services, and rescind, amend, or modify ~~((such regulations))~~ the rules from time to time as necessary in the public interest. In developing the ~~((regulations))~~ rules, the department shall consult with representatives of rural hospitals, community mental health centers, public health departments, community and migrant health clinics, and other providers of health care in rural communities. The department shall also consult with third-party payers, consumers, local officials, and others to ~~((insure))~~ ensure

broad participation in defining regulatory standards and requirements that are appropriate for a rural health care facility.

(2) When developing the rural health care facility licensure rules, the department shall consider the report of the Washington rural health care commission established under chapter 207, Laws of 1988. Nothing in this chapter requires the department to follow any specific recommendation contained in that report except as it may also be included in this chapter.

(3) Upon developing rules, the department shall enter into negotiations with appropriate federal officials to seek medicare approval of the facility and financial participation of medicare and other federal programs in developing and operating the rural health care facility.

~~((4) The department shall report periodically to the appropriate committees of the legislature on the progress of rule development and negotiations with the federal government.))~~

**Sec. 120.** RCW 70.180.110 and 1990 c 271 s 15 are each amended to read as follows:

(1) The department, in consultation with at least the higher education coordinating board, the state board for community and technical colleges ~~((education))~~, the superintendent of public instruction, and state-supported education programs in medicine, pharmacy, and nursing, shall develop a plan for increasing rural training opportunities for students in medicine, pharmacy, and nursing. The plan shall provide for direct exposure to rural health professional practice conditions for students planning careers in medicine, pharmacy, and nursing.

(2) The department and the medical, pharmacy, and nurse education programs shall:

(a) Inventory existing rural-based clinical experience programs, including internships, clerkships, residencies, and other training opportunities available to students pursuing degrees in nursing, pharmacy, and medicine;

(b) Identify where training opportunities do not currently exist and are needed;

(c) Develop recommendations for improving the availability of rural training opportunities;

(d) Develop recommendations on establishing agreements between education programs to assure that all students in medical, pharmacist, and nurse education programs in the state have access to rural training opportunities; and

(e) Review private and public funding sources to finance rural-based training opportunities.

~~((3) The department shall report to the house of representatives and senate standing committees on health care by December 1, 1990, with their findings and recommendations including needed legislative changes.))~~

**Sec. 121.** RCW 70.180.120 and 1990 c 271 s 16 are each amended to read as follows:

The department, in consultation with training programs that lead to licensure in midwifery and certification as a certified nurse midwife, and other appropriate private and public groups, shall develop a state-wide plan to address access to midwifery services.

The plan shall include at least the following: (1) Identification of maternity service shortage areas in the state where midwives could reduce the shortage of services; (2) an inventory of current training programs and preceptorship activities available to train licensed and certified nurse midwives; (3) identification of gaps in the availability of training due to such factors as geographic or economic conditions that prevent individuals from seeking training; (4) identification of other barriers to utilizing midwives; (5) identification of strategies to train future midwives such as developing training programs at community colleges and universities, using innovative telecommunications for training in rural areas, and establishing preceptorship programs accessible to prospective midwives in shortage areas; (6) development of recruitment strategies; and (7) estimates of expected costs associated in recruitment and training.

The plan shall identify the most expeditious and cost-efficient manner to recruit and train midwives to meet the current shortages. Plan development and implementation shall be coordinated with other state policy efforts directed toward, but not limited to, maternity care access, rural health care system organization, and provider recruitment for shortage and medically underserved areas of the state.

~~((The department shall submit a copy of the plan to the senate and house of representatives health care committees by December 1, 1990.))~~

**Sec. 122.** RCW 70.190.050 and 1994 sp.s. c 7 s 207 are each amended to read as follows:

(1) The Washington state institute for public policy shall conduct or contract for monitoring and tracking of the implementation of chapter 7, Laws of 1994 sp. sess. to determine whether these efforts result in a measurable reduction of violence. The institute shall also conduct or contract for an evaluation of the effectiveness of the community public health and safety networks in reducing the rate of at-risk youth through reducing risk factors and increasing protective factors. The evaluation plan shall result in statistically valid evaluation at both state-wide and community levels. ~~((The evaluation plan shall be submitted to the governor and appropriate legislative committees by July 1, 1995.))~~

(2) Starting five years after the initial grant to a community network, if the community network fails to meet the outcome standards and goals in any two consecutive years, the institute shall make recommendations to the legislature concerning whether the funds received by that community network should revert back to the originating agency. In making this determination, the institute shall consider the adequacy of the level of intervention relative to the risk factors in the community and any external events having a significant impact on risk factors or outcomes.

(3) The outcomes required under this chapter and social development standards and measures established by the department of health under RCW 43.70.555 shall be used in conducting the outcome evaluation of the community networks.

**Sec. 123.** RCW 70.190.100 and 1994 sp.s. c 7 s 307 are each amended to read as follows:

The family policy council shall:

(1) Establish network boundaries no later than July 1, 1994. There is a presumption that no county may be divided between two or more community networks and no network shall have fewer than forty thousand population. When approving multicounty networks, considering dividing a county between networks, or creating a network with a population of less than forty thousand, the council must consider: (a) Common economic, geographic, and social interests; (b) historical and existing shared governance; and (c) the size and location of population centers. Individuals and groups within any area shall be given ample opportunity to propose network boundaries in a manner designed to assure full consideration of their expressed wishes;

(2) Develop a technical assistance and training program to assist communities in creating and developing community networks and comprehensive plans;

(3) Approve the structure, purpose, goals, plan, and performance measurements of each community network;

(4) Identify all prevention and early intervention programs and funds, including all programs funded under RCW 69.50.520, in addition to the programs set forth in RCW 70.190.110, which could be transferred, in all or part, to the community networks, and report their findings and recommendations to the governor and the legislature regarding any appropriate program transfers by January 1 of each year;

(5) Reward community networks that show exceptional success as provided in RCW 43.41.195;

(6) Seek every opportunity to maximize federal and other funding that is consistent with the plans approved by the council for the purpose and goals of this chapter;

(7) Review the state-funded out-of-home placement rate before the end of each contract to determine whether the region has sufficiently reduced the rate. If the council determines that there has not been a sufficient reduction in the rate, it may reduce the immediately succeeding grant to the network;

(8)(a) The council shall monitor the implementation of programs contracted by participating state agencies by reviewing periodic reports on the extent to which services were delivered to intended populations, the quality of services, and the extent to which service outcomes were achieved at the conclusion of service interventions. This monitoring shall include provision for periodic feedback to community networks;

(b) The legislature intends that this monitoring be used by the Washington state institute for public policy, together with public health data on at-risk

behaviors and risk and protective factors, to produce an external evaluation of the effectiveness of the networks and their programs. For this reason, and to conserve public funds, the council shall not conduct or contract for the conduct of control group studies, quasi-experimental design studies, or other analysis efforts to attempt to determine the impact of network programs on at-risk behaviors or risk and protective factors; and

(9) Review the implementation of chapter 7, Laws of 1994 sp. sess. (~~and report its recommendations to the legislature annually.~~) The report shall use measurable performance standards to evaluate the implementation.

**Sec. 124.** RCW 70.190.110 and 1994 sp.s. c 7 s 308 are each amended to read as follows:

(1) The council, and each network, shall biennially review all state and federal funded programs serving individuals, families, or communities to determine whether a network may be better able to integrate and coordinate these services within the community.

(2) The council, and each network, shall specifically review (~~and report, to the governor and the legislature, on~~) the feasibility and desirability of decategorizing and granting, all or part of, the following program funds to the networks:

- (a) Consolidated juvenile services;
- (b) Family preservation and support services;
- (c) Readiness to learn;
- (d) Community mobilization;
- (e) Violence prevention;
- (f) Community-police partnership;
- (g) Child care;
- (h) Early intervention and educational services, including but not limited to, birth to three, birth to six, early childhood education and assistance, and headstart;
- (i) Crisis residential care;
- (j) Victims' assistance;
- (k) Foster care;
- (l) Adoption support;
- (m) Continuum of care; and
- (n) Drug and alcohol abuse prevention and early intervention in schools.

(3) In determining the desirability of decategorizing these programs the report shall analyze whether:

(a) The program is an integral part of the comprehensive plan without decategorization;

(b) The program is already adequately integrated and coordinated with other programs that are, or will be, funded by the network;

(c) The network could develop the capacity to provide the program's services;

(d) The program goals might receive greater community support and reinforcement through the network;



(e) The program presently ensures that adequate follow-up efforts are utilized, and whether the network could improve on those efforts through decategorization of the funds;

(f) The decategorization would benefit the community; and

(g) The decategorization would assist the network in achieving its goals.

(4) If the council or a network determines that a program should not be decategorized, the council or network shall make recommendations regarding programmatic changes that are necessary to improve the coordination and integration of services and programs, regardless of the funding source for those programs.

**Sec. 125.** RCW 70.195.010 and 1992 c 198 s 15 are each amended to read as follows:

For the purposes of implementing this chapter, the governor shall appoint a state birth-to-six interagency coordinating council and ensure that state agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families shall coordinate and collaborate in the planning and delivery of such services. ~~((The coordinating council shall report to the appropriate committees of the legislature on the implementation of this chapter by January 15, 1993.))~~

No state or local agency currently providing early intervention services to infants and toddlers with disabilities may use funds appropriated for early intervention services for infants and toddlers with disabilities to supplant funds from other sources.

All state and local agencies shall ensure that the implementation of this chapter will not cause any interruption in existing early intervention services for infants and toddlers with disabilities.

Nothing in this chapter shall be construed to permit the restriction or reduction of eligibility under Title V of the Social Security Act, P.L. 90-248, relating to maternal and child health or Title XIX of the Social Security Act, P.L. 89-97, relating to medicaid for infants and toddlers with disabilities.

**Sec. 126.** RCW 70.24.400 and 1991 c 3 s 327 are each amended to read as follows:

The department shall establish a state-wide system of regional acquired immunodeficiency syndrome (AIDS) service networks as follows:

(1) The secretary of health shall direct that all state or federal funds, excluding those from federal Title XIX for services or other activities authorized in this chapter, shall be allocated to the office on AIDS established in RCW 70.24.250. The secretary shall further direct that all funds for services and activities specified in subsection (3) of this section shall be provided to lead counties through contractual agreements based on plans developed as provided in subsection (2) of this section, unless direction of such funds is explicitly prohibited by federal law, federal regulation, or federal policy. The department shall deny funding allocations to lead counties only if the denial is based upon

documented incidents of nonfeasance, misfeasance, or malfeasance. However, the department shall give written notice and thirty days for corrective action in incidents of misfeasance or nonfeasance before funding may be denied. The department shall designate six AIDS service network regions encompassing the state. In doing so, the department shall use the boundaries of the regional structures in place for the community services administration on January 1, 1988.

(2) The department shall request that a lead county within each region, which shall be the county with the largest population, prepare, through a cooperative effort of local health departments within the region, a regional organizational and service plan, which meets the requirements set forth in subsection (3) of this section. Efforts should be made to use existing plans, where appropriate. The plan should place emphasis on contracting with existing hospitals, major voluntary organizations, or health care organizations within a region that have in the past provided quality services similar to those mentioned in subsection (3) of this section and that have demonstrated an interest in providing any of the components listed in subsection (3) of this section. If any of the counties within a region do not participate, it shall be the lead county's responsibility to develop the part of the plan for the nonparticipating county or counties. If all of the counties within a region do not participate, the department shall assume the responsibility.

(3) The regional AIDS service network plan shall include the following components:

- (a) A designated single administrative or coordinating agency;
- (b) A complement of services to include:
  - (i) Voluntary and anonymous counseling and testing;
  - (ii) Mandatory testing and/or counseling services for certain individuals, as required by law;
  - (iii) Notification of sexual partners of infected persons, as required by law;
  - (iv) Education for the general public, health professionals, and high-risk groups;
  - (v) Intervention strategies to reduce the incidence of HIV infection among high-risk groups, possibly including needle sterilization and methadone maintenance;
  - (vi) Related community outreach services for runaway youth;
  - (vii) Case management;
  - (viii) Strategies for the development of volunteer networks;
  - (ix) Strategies for the coordination of related agencies within the network;
- and
- (x) Other necessary information, including needs particular to the region;
- (c) A service delivery model that includes:
  - (i) Case management services; and
  - (ii) A community-based continuum-of-care model encompassing both medical, mental health, and social services with the goal of maintaining persons

with AIDS in a home-like setting, to the extent possible, in the least-expensive manner; and

(d) Budget, caseload, and staffing projections.

(4) Efforts shall be made by both the counties and the department to use existing service delivery systems, where possible, in developing the networks.

(5) The University of Washington health science program, in cooperation with the office on AIDS may, within available resources, establish a center for AIDS education, which shall be linked to the networks. The center for AIDS education is not intended to engage in state-funded research related to HIV infection, AIDS, or HIV-related conditions. Its duties shall include providing the office on AIDS with the appropriate educational materials necessary to carry out that office's duties.

(6) The department shall implement this section, consistent with available funds, by October 1, 1988, by establishing six regional AIDS service networks whose combined jurisdictions shall include the entire state.

(a) Until June 30, 1991, available funding for each regional AIDS service network shall be allocated as follows:

(i) Seventy-five percent of the amount provided for regional AIDS service networks shall be allocated per capita based on the number of persons residing within each region, but in no case less than one hundred fifty thousand dollars for each regional AIDS service network per fiscal year. This amount shall be expended for testing, counseling, education, case management, notification of sexual partners of infected persons, planning, coordination, and other services required by law, except for those enumerated in (a)(ii) of this subsection.

(ii) Twenty-five percent of the amount provided for regional AIDS service networks shall be allocated for intervention strategies specifically addressing groups that are at a high risk of being infected with the human immunodeficiency virus. The allocation shall be made by the office on AIDS based on documented need as specified in regional AIDS network plans.

(b) After June 30, 1991, the funding shall be allocated as provided by law. ~~((By December 15, 1990, the department shall report to the appropriate committees of the legislature on proposed methods of funding regional AIDS service networks.))~~

(7) The regional AIDS service networks shall be the official state regional agencies for AIDS information education and coordination of services. The state public health officer, as designated by the secretary of health, shall make adequate efforts to publicize the existence and functions of the networks.

(8) If the department is not able to establish a network by an agreement solely with counties, it may contract with nonprofit agencies for any or all of the designated network responsibilities.

(9) The department, in establishing the networks, shall study mechanisms that could lead to reduced costs and/or increased access to services. The methods shall include capitation.

(10) The department shall reflect in its departmental biennial budget request the funds necessary to implement this section.

(11) ~~(The department shall submit an implementation plan to the appropriate committees of the legislature by July 1, 1988.~~

~~(12))~~ The use of appropriate materials may be authorized by regional AIDS service networks in the prevention or control of HIV infection.

**Sec. 127.** RCW 70.41.320 and 1995 1st sp.s. c 18 s 5 are each amended to read as follows:

(1) Hospitals and acute care facilities shall:

(a) Work cooperatively with the department of social and health services, area agencies on aging, and local long-term care information and assistance organizations in the planning and implementation of patient discharges to long-term care services.

(b) Establish and maintain a system for discharge planning and designate a person responsible for system management and implementation.

(c) Establish written policies and procedures to:

(i) Identify patients needing further nursing, therapy, or supportive care following discharge from the hospital;

(ii) Develop a documented discharge plan for each identified patient, including relevant patient history, specific care requirements, and date such follow-up care is to be initiated;

(iii) Coordinate with patient, family, caregiver, and appropriate members of the health care team;

(iv) Provide any patient, regardless of income status, written information and verbal consultation regarding the array of long-term care options available in the community, including the relative cost, eligibility criteria, location, and contact persons;

(v) Promote an informed choice of long-term care services on the part of patients, family members, and legal representatives; and

(vi) Coordinate with the department and specialized case management agencies, including area agencies on aging and other appropriate long-term care providers, as necessary, to ensure timely transition to appropriate home, community residential, or nursing facility care.

(d) Work in cooperation with the department which is responsible for ensuring that patients eligible for medicaid long-term care receive prompt assessment and appropriate service authorization.

(2) In partnership with selected hospitals, the department of social and health services shall develop and implement pilot projects in up to three areas of the state with the goal of providing information about appropriate in-home and community services to individuals and their families early during the individual's hospital stay.

The department shall not delay hospital discharges but shall assist and support the activities of hospital discharge planners. The department also shall coordinate with home health and hospice agencies whenever appropriate. The

role of the department is to assist the hospital and to assist patients and their families in making informed choices by providing information regarding home and community options.

~~((The department shall by December 12, 1995, report to the house of representatives health care committee and the senate health and long-term care committee regarding the progress and results of the pilot projects along with recommendations regarding continuation or modification of the pilot projects.))~~

In conducting the pilot projects, the department shall:

(a) Assess and offer information regarding appropriate in-home and community services to individuals who are medicaid clients or applicants; and

(b) Offer assessment and information regarding appropriate in-home and community services to individuals who are reasonably expected to become medicaid recipients within one hundred eighty days of admission to a nursing facility.

**Sec. 128.** RCW 70.93.250 and 1990 c 66 s 3 are each amended to read as follows:

The department shall provide grants to local units of government to establish, conduct, and evaluate community service programs for litter cleanup. Programs eligible for grants under this section shall include, but not be limited to, programs established pursuant to RCW 72.09.260. ~~((The department shall report to the appropriate standing committees of the legislature by December 31, 1991, on the effectiveness of community service litter cleanup programs funded from grants under this section.))~~

**Sec. 129.** RCW 70.94.162 and 1993 c 252 s 6 are each amended to read as follows:

(1) The department and delegated local air authorities are authorized to determine, assess, and collect, and each permit program source shall pay, annual fees sufficient to cover the direct and indirect costs of implementing a state operating permit program approved by the United States environmental protection agency under the federal clean air act. However, a source that receives its operating permit from the United States environmental protection agency shall not be considered a permit program source so long as the environmental protection agency continues to act as the permitting authority for that source. Each permitting authority shall develop by rule a fee schedule allocating among its permit program sources the costs of the operating permit program, and may, by rule, establish a payment schedule whereby periodic installments of the annual fee are due and payable more frequently. All operating permit program fees collected by the department shall be deposited in the air operating permit account. All operating permit program fees collected by the delegated local air authorities shall be deposited in their respective air operating permit accounts or other accounts dedicated exclusively to support of the operating permit program. The fees assessed under this subsection shall first be due not less than forty-five days after

the United States environmental protection agency delegates to the department the authority to administer the operating permit program and then annually thereafter.

The department shall establish, by rule, procedures for administrative appeals to the department regarding the fee assessed pursuant to this subsection.

(2) The fee schedule developed by each permitting authority shall fully cover and not exceed both its permit administration costs and the permitting authority's share of state-wide program development and oversight costs.

(a) Permit administration costs are those incurred by each permitting authority, including the department, in administering and enforcing the operating permit program with respect to sources under its jurisdiction. Costs associated with the following activities are fee eligible as these activities relate to the operating permit program and to the sources permitted by a permitting authority, including, where applicable, sources subject to a general permit:

(i) Preapplication assistance and review of an application and proposed compliance plan for a permit, permit revision, or renewal;

(ii) Source inspections, testing, and other data-gathering activities necessary for the development of a permit, permit revision, or renewal;

(iii) Acting on an application for a permit, permit revision, or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision, or renewal, preparing a draft permit and fact sheet, and preparing a final permit, but excluding the costs of developing BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants;

(iv) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(v) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(vi) Reviewing compliance certifications and emissions reports and conducting related compilation and reporting activities;

(vii) Conducting compliance inspections, complaint investigations, and other activities necessary to ensure that a source is complying with permit conditions;

(viii) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(ix) The share attributable to permitted sources of the development and maintenance of emissions inventories;

(x) The share attributable to permitted sources of ambient air quality monitoring and associated recording and reporting activities;

(xi) Training for permit administration and enforcement;

(xii) Fee determination, assessment, and collection, including the costs of necessary administrative dispute resolution and penalty collection;

(xiii) Required fiscal audits, periodic performance audits, and reporting activities;

(xiv) Tracking of time, revenues and expenditures, and accounting activities;  
(xv) Administering the permit program including the costs of clerical support, supervision, and management;

(xvi) Provision of assistance to small businesses under the jurisdiction of the permitting authority as required under section 507 of the federal clean air act; and

(xvii) Other activities required by operating permit regulations issued by the United States environmental protection agency under the federal clean air act.

(b) Development and oversight costs are those incurred by the department in developing and administering the state operating permit program, and in overseeing the administration of the program by the delegated local permitting authorities. Costs associated with the following activities are fee eligible as these activities relate to the operating permit program:

(i) Review and determinations necessary for delegation of authority to administer and enforce a permit program to a local air authority under RCW 70.94.161(2) and 70.94.860;

(ii) Conducting fiscal audits and periodic performance audits of delegated local authorities, and other oversight functions required by the operating permit program;

(iii) Administrative enforcement actions taken by the department on behalf of a permitting authority, including those actions taken by the department under RCW 70.94.785, but excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(iv) Determination and assessment with respect to each permitting authority of the fees covering its share of the costs of development and oversight;

(v) Training and assistance for permit program administration and oversight, including training and assistance regarding technical, administrative, and data management issues;

(vi) Development of generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(vii) State codification of federal rules or standards for inclusion in operating permits;

(viii) Preparation of delegation package and other activities associated with submittal of the state permit program to the United States environmental protection agency for approval, including ongoing coordination activities;

(ix) General administration and coordination of the state permit program, related support activities, and other agency indirect costs, including necessary data management and quality assurance;

(x) Required fiscal audits and periodic performance audits of the department, and reporting activities;

(xi) Tracking of time, revenues and expenditures, and accounting activities;

(xii) Public education and outreach related to the operating permit program, including the maintenance of a permit register;

(xiii) The share attributable to permitted sources of compiling and maintaining emissions inventories;

(xiv) The share attributable to permitted sources of ambient air quality monitoring, related technical support, and associated recording activities;

(xv) The share attributable to permitted sources of modeling activities;

(xvi) Provision of assistance to small business as required under section 507 of the federal clean air act as it exists on July 25, 1993, or its later enactment as adopted by reference by the director by rule;

(xvii) Provision of services by the department of revenue and the office of the state attorney general and other state agencies in support of permit program administration;

(xviii) A one-time revision to the state implementation plan to make those administrative changes necessary to ensure coordination of the state implementation plan and the operating permit program; and

(xix) Other activities required by operating permit regulations issued by the United States environmental protection agency under the federal clean air act.

(3) The responsibility for operating permit fee determination, assessment, and collection is to be shared by the department and delegated local air authorities as follows:

(a) Each permitting authority, including the department, acting in its capacity as a permitting authority, shall develop a fee schedule and mechanism for collecting fees from the permit program sources under its jurisdiction; the fees collected by each authority shall be sufficient to cover its costs of permit administration and its share of the department's costs of development and oversight. Each delegated local authority shall remit to the department its share of the department's development and oversight costs.

(b) Only those local air authorities to whom the department has delegated the authority to administer the program pursuant to RCW 70.94.161(2) (b) and (c) and 70.94.860 shall have the authority to administer and collect operating permit fees. The department shall retain the authority to administer and collect such fees with respect to the sources within the jurisdiction of a local air authority until the effective date of program delegation to that air authority.

(c) The department shall allocate its development and oversight costs among all permitting authorities, including the department, in proportion to the number of permit program sources under the jurisdiction of each authority, except that extraordinary costs or other costs readily attributable to a specific permitting authority may be assessed that authority. For purposes of this subsection, all sources covered by a single general permit shall be treated as one source.

(4) The department and each delegated local air authority shall adopt by rule a general permit fee schedule for sources under their respective jurisdictions after such time as the department adopts provisions for general permit issuance. Within ninety days of the time that the department adopts a general permit fee schedule, the department shall report to the relevant standing committees of the legislature regarding the general permit fee schedules adopted by the department and by the delegated local air authorities. The permit administration costs of each general permit shall be allocated equitably among only those sources subject to



that general permit. The share of development and oversight costs attributable to each general permit shall be determined pursuant to subsection (3)(c) of this section.

(5) The fee schedule developed by the department shall allocate among the sources for whom the department acts as a permitting authority, other than sources subject to a general permit, those portions of the department's permit administration costs and the department's share of the development and oversight costs which the department does not plan to recover under its general permit fee schedule or schedules as follows:

(a) The department shall allocate its permit administration costs and its share of the development and oversight costs not recovered through general permit fees according to a three-tiered model based upon:

- (i) The number of permit program sources under its jurisdiction;
- (ii) The complexity of permit program sources under its jurisdiction; and
- (iii) The size of permit program sources under its jurisdiction, as measured by the quantity of each regulated pollutant emitted by the source.

(b) Each of the three tiers shall be equally weighted.

(c) The department may, in addition, allocate activities-based costs readily attributable to a specific source to that source under RCW 70.94.152(1) and 70.94.154(7).

The quantity of each regulated pollutant emitted by a source shall be determined based on the annual emissions during the most recent calendar year for which data is available.

(6) The department shall, after opportunity for public review and comment, adopt rules that establish a process for development and review of its operating permit program fee schedule, a methodology for tracking program revenues and expenditures and, for both the department and the delegated local air authorities, a system of fiscal audits, reports, and periodic performance audits.

(a) The fee schedule development and review process shall include the following:

(i) The department shall conduct a biennial workload analysis. The department shall provide the opportunity for public review of and comment on the workload analysis. The department shall review and update its workload analysis during each biennial budget cycle, taking into account information gathered by tracking previous revenues, time, and expenditures and other information obtained through fiscal audits and performance audits.

(ii) The department shall prepare a biennial budget based upon the resource requirements identified in the workload analysis for that biennium. In preparing the budget, the department shall take into account the projected operating permit account balance at the start of the biennium. The department shall provide the opportunity for public review of and comment on the proposed budget. The department shall review and update its budget each biennium.

(iii) The department shall develop a fee schedule allocating the department's permit administration costs and its share of the development and oversight costs

among the department's permit program sources using the methodology described in subsection (5) of this section. The department shall provide the opportunity for public review of and comment on the allocation methodology and fee schedule. The department shall provide procedures for administrative resolution of disputes regarding the source data on which allocation determinations are based; these procedures shall be designed such that resolution occurs prior to the completion of the allocation process. The department shall review and update its fee schedule annually.

(b) The methodology for tracking revenues and expenditures shall include the following:

(i) The department shall develop a system for tracking revenues and expenditures that provides the maximum practicable information. At a minimum, revenues from fees collected under the operating permit program shall be tracked on a source-specific basis and time and expenditures required to administer the program shall be tracked on the basis of source categories and functional categories. Each general permit will be treated as a separate source category for tracking and accounting purposes.

(ii) The department shall use the information obtained from tracking revenues, time, and expenditures to modify the workload analysis required in subsection (6)(a) of this section.

(iii) The information obtained from tracking revenues, time, and expenditures shall not provide a basis for challenge to the amount of an individual source's fee.

~~((iv) On or before December 1, 1996, the department shall report to the appropriate standing committees of the legislature recommendations on the administrative feasibility and benefits of source-specific tracking of time and expenditures. The report may include findings from demonstration projects wherein time and expenditures are tracked on a source-specific basis.))~~

(c) The system of fiscal audits, reports, and periodic performance audits shall include the following:

(i) The department and the delegated local air authorities shall prepare annual reports and shall submit the reports to, respectively, the appropriate standing committees of the legislature and the board of directors of the local air authority.

(ii) The department shall arrange for fiscal audits and routine performance audits and for periodic intensive performance audits of each permitting authority and of the department.

(7) Each local air authority requesting delegation shall, after opportunity for public review and comment, publish regulations which establish a process for development and review of its operating permit program fee schedule, and a methodology for tracking its revenues and expenditures. These regulations shall be submitted to the department for review and approval as part of the local authority's delegation request.

(8) As used in this section and in RCW 70.94.161(14), "regulated pollutant" shall have the same meaning as defined in section 502(b) of the federal clean air

act as it exists on July 25, 1993, or its later enactment as adopted by reference by the director by rule.

(9) ~~(The department shall report to the appropriate standing committees of the legislature by December 1, 1995, regarding the appropriateness of the fee structures authorized under this section for those sources not subject to permit program requirements as of July 25, 1993, but which later become subject to such permit program requirements. In preparing the report, the department shall consult with representatives of such sources, local air authorities, environmental groups, and other interested parties.)~~ Fee structures as authorized under this section shall remain in effect until such time as the legislature authorizes an alternative structure following receipt of the report required by this subsection.

**Sec. 130.** RCW 70.94.656 and 1995 c 261 s 1 are each amended to read as follows:

It is hereby declared to be the policy of this state that strong efforts should be made to minimize adverse effects on air quality from the open burning of field and turf grasses grown for seed. To such end this section is intended to promote the development of economical and practical alternate agricultural practices to such burning, and to provide for interim regulation of such burning until practical alternates are found.

(1) The department shall approve of a study or studies for the exploration and identification of economical and practical alternate agricultural practices to the open burning of field and turf grasses grown for seed. Any study conducted pursuant to this section shall be conducted by Washington State University. The university may not charge more than eight percent for administrative overhead. Prior to the issuance of any permit for such burning under RCW 70.94.650, there shall be collected a fee not to exceed one dollar per acre of crop to be burned. Any such fees received by any authority shall be transferred to the department of ecology. The department of ecology shall deposit all such acreage fees in a special grass seed burning research account, hereby created, in the state treasury.

(2) The department shall allocate moneys annually from this account for the support of any approved study or studies as provided for in subsection (1) of this section. Whenever the department of ecology shall conclude that sufficient reasonably available alternates to open burning have been developed, and at such time as all costs of any studies have been paid, the grass seed burning research account shall be dissolved, and any money remaining therein shall revert to the general fund. The fee collected under subsection (1) of this section shall constitute the research portion of fees required under RCW 70.94.650 for open burning of grass grown for seed.

(3) Whenever on the basis of information available to it, the department after public hearings have been conducted wherein testimony will be received and considered from interested parties wishing to testify shall conclude that any procedure, program, technique, or device constitutes a practical alternate agricultural practice to the open burning of field or turf grasses grown for seed, the department shall, by order, certify approval of such alternate. Thereafter, in

any case which any such approved alternate is reasonably available, the open burning of field and turf grasses grown for seed shall be disallowed and no permit shall issue therefor.

(4) Until approved alternates become available, the department or the authority may limit the number of acres on a pro rata basis among those affected for which permits to burn will be issued in order to effectively control emissions from this source.

(5) Permits issued for burning of field and turf grasses may be conditioned to minimize emissions insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions.

(6) By November 1, 1996, and every two years thereafter until grass seed burning is prohibited, Washington State University (~~shall submit to the appropriate standing committees of the legislature~~) may prepare a brief report assessing the potential of the university's research to result in economical and practical alternatives to grass seed burning.

**Sec. 131.** RCW 70.95.263 and 1975-'76 2nd ex.s. c 41 s 5 are each amended to read as follows:

The department shall in addition to its other duties and powers under this chapter:

(1) Prepare the following:

(a) A management system for recycling waste paper generated by state offices and institutions in cooperation with such offices and institutions;

(b) An evaluation of existing and potential systems for recovery of energy and materials from solid waste with recommendations to affected governmental agencies as to those systems which would be the most appropriate for implementation;

(c) A data management system to evaluate and assist the progress of state and local jurisdictions and private industry in resource recovery;

(d) Identification of potential markets, in cooperation with private industry, for recovered resources and the impact of the distribution of such resources on existing markets;

(e) Studies on methods of transportation, collection, reduction, separation, and packaging which will encourage more efficient utilization of existing waste recovery facilities;

(f) Recommendations on incentives, including state grants, loans, and other assistance, to local governments which will encourage the recovery and recycling of solid wastes.

(2) Provide technical information and assistance to state and local jurisdictions, the public, and private industry on solid waste recovery and/or recycling.

(3) Procure and expend funds available from federal agencies and other sources to assist the implementation by local governments of solid waste recovery and/or recycling programs, and projects.

(4) Conduct necessary research and studies to carry out the purposes of this chapter.

(5) Encourage and assist local governments and private industry to develop pilot solid waste recovery and/or recycling projects.

(6) Monitor, assist with research, and collect data for use in assessing feasibility for others to develop solid waste recovery and/or recycling projects.

~~((7) Make periodic recommendations to the governor and the legislature on actions and policies which would further implement the objectives of chapter 41, Laws of 1975-'76 2nd ex. sess.))~~

Sec. 132. RCW 70.95.810 and 1995 c 399 s 191 are each amended to read as follows:

(1) In order to establish the feasibility of composting food and yard wastes, the department shall provide funds, as available, to local governments submitting a proposal to compost such wastes.

(2) The department, in cooperation with the department of community, trade, and economic development, may approve an application if the project can demonstrate the essential parameters for successful composting, including, but not limited to, cost-effectiveness, handling and safety requirements, and current and potential markets.

~~((3) The department shall periodically report to the appropriate standing committees of the legislature on the need for, and feasibility of, composting systems for food and yard wastes.))~~

Sec. 133. RCW 70.95C.030 and 1990 c 114 s 3 are each amended to read as follows:

(1) There is established in the department an office of waste reduction. The office shall use its authorities to encourage the voluntary reduction of hazardous substance usage and waste generation by waste generators and hazardous substance users. The office shall prepare and submit a quarterly progress report to the director ~~((and the director shall submit an annual progress report to the appropriate environmental standing committees of the legislature beginning December 31, 1988)).~~

(2) The office shall be the coordinating center for all state agency programs that provide technical assistance to waste generators and hazardous substance users and shall serve as the state's lead agency and promoter for such programs. In addition to this coordinating function, the office shall encourage hazardous substance use reduction and waste reduction by:

(a) Providing for the rendering of advice and consultation to waste generators and hazardous substance users on hazardous substance use reduction and waste reduction techniques, including assistance in preparation of plans provided for in RCW 70.95C.200;

(b) Sponsoring or co-sponsoring with public or private organizations technical workshops and seminars on waste reduction and hazardous substance use reduction;

(c) Administering a waste reduction and hazardous substance use reduction data base and hotline providing comprehensive referral services to waste generators and hazardous substance users;

(d) Administering a waste reduction and hazardous substance use reduction research and development program;

(e) Coordinating a waste reduction and hazardous substance use reduction public education program that includes the utilization of existing publications from public and private sources, as well as publishing necessary new materials on waste reduction;

(f) Recommending to institutions of higher education in the state courses and curricula in areas related to waste reduction and hazardous substance use reduction; and

(g) Operating an intern program in cooperation with institutions of higher education and other outside resources to provide technical assistance on hazardous substance use reduction and waste reduction techniques and to carry out research projects as needed within the office.

**Sec. 134.** RCW 70.95C.250 and 1994 c 248 s 1 are each amended to read as follows:

(1) Not later than January 1, 1995, the department shall designate an industry type and up to ten individual facilities within that industry type to be the focus of a pilot multimedia program. The program shall be designed to coordinate department actions related to environmental permits, plans, approvals, certificates, registrations, technical assistance, and inspections. The program shall also investigate the feasibility of issuing facility-wide permits. The director shall determine the industry type and facilities based on:

(a) A review of at least three industry types; and

(b) Criteria which shall include at least the following factors:

(i) The potential for the industry to serve as a state-wide model for multimedia environmental programs including pollution prevention;

(ii) Whether the industry type is subject to regulatory requirements relating to at least two of the following subject areas: Air quality, water quality, or hazardous waste management;

(iii) The existence within the industry type of a range of business sizes; and

(iv) Voluntary participation in the program.

(2) ~~((Not later than January 1, 1997, the department shall submit to the governor and the appropriate standing committees of the legislature:~~

~~—(a) A report evaluating the pilot multimedia program. The report shall consider the program's effect on the efficiency and effectiveness of program delivery and shall evaluate the feasibility of expanding the program to other industry types; and~~

~~—(b) A report analyzing the feasibility of a facility-wide permit program.~~

~~—(3)) In developing the program, the department shall consult with and seek the cooperation of the environmental protection agency.~~

~~((4))~~ (3) For purposes of this section, "facility-wide permit" means a single multimedia permit issued by the department to the owner or operator of a facility incorporating the permits and any other relevant department approvals previously issued to the owner or operator or currently required by the department.

**Sec. 135.** RCW 70.96A.420 and 1995 c 321 s 3 are each amended to read as follows:

(1) The department, in consultation with opiate substitution treatment service providers and counties authorizing opiate substitution treatment programs, shall establish state-wide treatment standards for opiate substitution treatment programs. The department and counties that authorize opiate substitution treatment programs shall enforce these treatment standards. The treatment standards shall include, but not be limited to, reasonable provisions for all appropriate and necessary medical procedures, counseling requirements, urinalysis, and other suitable tests as needed to ensure compliance with this chapter. A opiate substitution treatment program shall not have a caseload in excess of three hundred fifty persons.

(2) The department, in consultation with opiate substitution treatment programs and counties authorizing opiate substitution treatment programs, shall establish state-wide operating standards for opiate substitution treatment programs. The department and counties that authorize opiate substitution treatment programs shall enforce these operating standards. The operating standards shall include, but not be limited to, reasonable provisions necessary to enable the department and authorizing counties to monitor certified and licensed opiate substitution treatment programs for compliance with this chapter and the treatment standards authorized by this chapter and to minimize the impact of the opiate substitution treatment programs upon the business and residential neighborhoods in which the program is located.

(3) The department shall establish criteria for evaluating the compliance of opiate ~~((substitute {substitution}))~~ substitution treatment programs with the goals and standards established under this chapter. As a condition of certification, opiate substitution programs shall submit an annual report to the department and county legislative authority, including data as specified by the department necessary for outcome analysis. The department shall analyze and evaluate the data submitted by each treatment program and take corrective action where necessary to ensure compliance with the goals and standards enumerated under this chapter. ~~((Before January 1 of each year, the department shall submit an annual report to the legislature, including the outcome analysis of each treatment program.))~~

**Sec. 136.** RCW 70.96A.500 and 1995 c 54 s 2 are each amended to read as follows:

~~((4))~~ The department shall contract with the University of Washington fetal alcohol syndrome clinic to provide fetal alcohol exposure screening and assessment services. The University indirect charges shall not exceed ten percent

of the total contract amount. The contract shall require the University of Washington fetal alcohol syndrome clinic to provide the following services:

~~((a))~~ (1) Training for health care staff in community-based fetal alcohol exposure clinics to ensure the accurate diagnosis of individuals with fetal alcohol exposure and the development and implementation of appropriate service referral plans;

~~((b))~~ (2) Development of written or visual educational materials for the individuals diagnosed with fetal alcohol exposure and their families or caregivers;

~~((c))~~ (3) Systematic information retrieval from each community clinic to ~~((i))~~ (a) maintain diagnostic accuracy and reliability across all community clinics, ~~((ii))~~ (b) facilitate the development of effective and efficient screening tools for population-based identification of individuals with fetal alcohol exposure, ~~((iii))~~ (c) facilitate identification of the most clinically efficacious and cost-effective educational, social, vocational, and health service interventions for individuals with fetal alcohol exposure;

~~((d))~~ (4) Based on available funds, establishment of a network of community-based fetal alcohol exposure clinics across the state to meet the demand for fetal alcohol exposure diagnostic and referral services; and

~~((e))~~ (5) Preparation of an annual report for submission to the department of health, the department of social and health services, the department of corrections, and the office of the superintendent of public instruction which includes the information retrieved under subsection ~~((f))~~ (3) of this section.

~~((2) The department shall submit to the legislature, by January 1, 1996, a copy of the governor's fetal alcohol syndrome advisory board report.)~~

Sec. 137. RCW 71.24.035 and 1991 c 306 s 3, 1991 c 262 s 1, and 1991 c 29 s 1 are each reenacted and amended to read as follows:

(1) The department is designated as the state mental health authority.

(2) The secretary may provide for public, client, and licensed service provider participation in developing the state mental health program.

(3) The secretary shall provide for participation in developing the state mental health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state mental health program.

(4) The secretary shall be designated as the county authority if a county fails to meet state minimum standards or refuses to exercise responsibilities under RCW 71.24.045.

(5) The secretary shall:

(a) Develop a biennial state mental health program that incorporates county biennial needs assessments and county mental health service plans and state services for mentally ill adults and children. The secretary may also develop a six-year state mental health plan;

(b) Assure that any county community mental health program provides access to treatment for the county's residents in the following order of priority: (i) The



acutely mentally ill; (ii) chronically mentally ill adults and severely emotionally disturbed children; and (iii) the seriously disturbed. Such programs shall provide:

(A) Outpatient services;

(B) Emergency care services for twenty-four hours per day;

(C) Day treatment for mentally ill persons which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;

(D) Screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission;

(E) Employment services, which may include supported employment, transitional work, placement in competitive employment, and other work-related services, that result in mentally ill persons becoming engaged in meaningful and gainful full or part-time work. Other sources of funding such as the division of vocational rehabilitation may be utilized by the secretary to maximize federal funding and provide for integration of services;

(F) Consultation and education services; and

(G) Community support services;

(c) Develop and (~~promulgate~~) adopt rules establishing state minimum standards for the delivery of mental health services including, but not limited to:

(i) Licensed service providers;

(ii) Regional support networks; and

(iii) Residential and inpatient services, evaluation and treatment services and facilities under chapter 71.05 RCW, resource management services, and community support services;

(d) Assure that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in this section;

(e) Establish a standard contract or contracts, consistent with state minimum standards, which shall be used by the counties;

(f) Establish, to the extent possible, a standardized auditing procedure which minimizes paperwork requirements of county authorities and licensed service providers;

(g) Develop and maintain an information system to be used by the state, counties, and regional support networks when they are established which shall include a tracking method which allows the department and regional support networks to identify mental health clients' participation in any mental health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and in RCW 71.05.390, 71.05.400, 71.05.410, 71.05.420, 71.05.430, and 71.05.440. The system shall be fully operational no later than January 1, 1993: PROVIDED, HOWEVER, That when a regional support network is established, the department shall have an operational interim tracking system for that network that will be

adequate for the regional support network to perform its required duties under this chapter;

- (h) License service providers who meet state minimum standards;
- (i) Certify regional support networks that meet state minimum standards;
- (j) Periodically inspect certified regional support networks and licensed service providers at reasonable times and in a reasonable manner; and
- (k) Fix fees to be paid by evaluation and treatment centers to the secretary for the required inspections;

(l) Monitor and audit counties, regional support networks, and licensed service providers as needed to assure compliance with contractual agreements authorized by this chapter;

(m) Prior to September 1, 1989, adopt such rules as are necessary to implement the department's responsibilities under this chapter pursuant to chapter 34.05 RCW: PROVIDED, That such rules shall be submitted to the appropriate committees of the legislature for review and comment prior to adoption; and

(n) Beginning July 1, 1989, and continuing through July 1, 1993, track by region and county the use and cost of state hospital and local evaluation and treatment facilities for seventy-two hour detention, fourteen, ninety, and one hundred eighty day commitments pursuant to chapter 71.05 RCW, voluntary care in state hospitals, and voluntary community inpatient care covered by the medical assistance program. Service use and cost reports shall be provided to regions in a timely fashion at six-month intervals.

(6) The secretary shall use available resources appropriated specifically for community mental health programs only for programs under RCW 71.24.045. After July 1, 1995, or when regional support networks are established, available resources may be used only for regional support networks.

(7) Each certified regional support network and licensed service provider shall file with the secretary, on request, such data, statistics, schedules, and information as the secretary reasonably requires. A certified regional support network or licensed service provider which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may have its certification or license revoked or suspended.

(8) The secretary may suspend, revoke, limit, or restrict a certification or license, or refuse to grant a certification or license for failure to conform to the law, applicable rules and regulations, or applicable standards, or failure to meet the minimum standards established pursuant to this section.

(9) The superior court may restrain any regional support network or service provider from operating without certification or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.

(10) Upon petition by the secretary, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or

employee of the secretary authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any regional support network or service provider refusing to consent to inspection or examination by the authority.

(11) The secretary shall adopt such rules as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to certification and licensing and other action relevant to certifying regional support networks and licensing service providers.

(12) Notwithstanding the existence or pursuit of any other remedy, the secretary may, in the manner provided by law, upon the advice of the attorney general who shall represent the secretary in the proceedings, maintain an action in the name of the state for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a regional support network or service provider without certification or a license under this chapter.

(13) The standards for certification of evaluation and treatment facilities shall include standards relating to maintenance of good physical and mental health and other services to be afforded persons pursuant to this chapter and chapter 71.05 RCW, and shall otherwise assure the effectuation of the purposes and intent of this chapter and chapter 71.05 RCW.

(14)(a) The department, in consultation with affected parties, shall establish a distribution formula that reflects county needs assessments based on the number of persons who are acutely mentally ill, chronically mentally ill, severely emotionally disturbed, and seriously disturbed as defined in chapter 71.24 RCW. The formula shall take into consideration the impact on counties of demographic factors in counties which result in concentrations of priority populations as defined in subsection (15) of this section. These factors shall include the population concentrations resulting from commitments under the involuntary treatment act, chapter 71.05 RCW, to state psychiatric hospitals, as well as concentration in urban areas, at border crossings at state boundaries, and other significant demographic and workload factors.

(b) (~~The department shall submit a proposed distribution formula in accordance with this section to the ways and means and health and long-term care committees of the senate and to the ways and means and human services committees of the house of representatives by October 1, 1991.~~) The formula shall also include a projection of the funding allocations that will result for each county, which specifies allocations according to priority populations, including the allocation for services to children and other underserved populations.

(15) To supersede duties assigned under subsection (5)(a) and (b) of this section, and to assure a county-based, integrated system of care for acutely mentally ill adults and children, chronically mentally ill adults, severely emotionally disturbed children, and seriously disturbed adults and children who are determined by regional support networks at their sole discretion to be at risk of becoming acutely or chronically mentally ill, or severely emotionally

disturbed, the secretary shall encourage the development of regional support networks as follows:

By December 1, 1989, the secretary shall recognize regional support networks requested by counties or groups of counties.

All counties wishing to be recognized as a regional support network on December 1, 1989, shall submit their intentions regarding participation in the regional support networks by October 30, 1989, along with preliminary plans. Counties wishing to be recognized as a regional support network by January 1<sup>st</sup> of any year thereafter shall submit their intentions by October 30<sup>th</sup> of the previous year along with preliminary plans. The secretary shall assume all duties assigned to the nonparticipating counties under chapters 71.05 and 71.24 RCW on July 1, 1995. Such responsibilities shall include those which would have been assigned to the nonparticipating counties under regional support networks.

The implementation of regional support networks, or the secretary's assumption of all responsibilities under chapters 71.05 and 71.24 RCW, shall be included in all state and federal plans affecting the state mental health program including at least those required by this chapter, the medicaid program, and P.L. 99-660. Nothing in these plans shall be inconsistent with the intent and requirements of this chapter.

(16) By January 1, 1992, the secretary shall provide available resources to regional support networks to operate freestanding evaluation and treatment facilities or for regional support networks to contract with local hospitals to assure access for regional support network patients.

(17) The secretary shall:

(a) Disburse the first funds for the regional support networks that are ready to begin implementation by January 1, 1990, or within sixty days of approval of the biennial contract. The department must either approve or reject the biennial contract within sixty days of receipt.

(b) Enter into biennial contracts with regional support networks to begin implementation between January 1, 1990, and March 1, 1990, and complete implementation by June 1995. The contracts shall be consistent with available resources. No contract shall be approved that does not include progress toward meeting the goals of this chapter by taking responsibility for: (i) Short-term commitments; (ii) residential care; and (iii) emergency response systems.

(c) By July 1, 1993, allocate one hundred percent of available resources to regional support networks created by January 1, 1990, in a single grant. Regional support networks created by January 1, 1991, shall receive a single block grant by July 1, 1993; regional support networks created by January 1, 1992, shall receive a single block grant by July 1, 1994; and regional support networks created by January 1, 1993, shall receive a single block grant by July 1, 1995. The grants shall include funds currently provided for all residential services, all services pursuant to chapter 71.05 RCW, and all community support services and shall be distributed in accordance with a formula submitted to the legislature by January 1, 1993, in accordance with subsection (14) of this section.

(d) By January 1, 1990, allocate available resources to regional support networks for community support services, resource management services, and residential services excluding evaluation and treatment facilities provided pursuant to chapter 71.05 RCW in a single grant using the distribution formula established in subsection (14) of this section.

(e) By March 1, 1990, or within sixty days of approval of the contract continuing through July 1, 1993, provide grants as specifically appropriated by the legislature to regional support networks for evaluation and treatment facilities for persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW. For regional support networks created by January 1, 1993, provide grants as specifically appropriated by the legislature to regional support networks for evaluation and treatment facilities for persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW through July 1, 1995.

(f) Notify regional support networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(g) Deny funding allocations to regional support networks based solely upon formal findings of noncompliance with the terms of the regional support network's contract with the department. Written notice and at least thirty days for corrective action must precede any such action. In such cases, regional support networks shall have full rights to appeal under chapter 34.05 RCW.

(h) Identify in its departmental biennial operating and capital budget requests the funds requested by regional support networks to implement their responsibilities under this chapter.

(i) Contract to provide or, if requested, make grants to counties to provide technical assistance to county authorities or groups of county authorities to develop regional support networks.

(18) The department of social and health services, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by free-standing evaluation and treatment facilities certified under chapter 71.05 RCW. The department shall periodically report its efforts to the health care and corrections committee of the senate and the human services committee of the house of representatives.

(19) The secretary shall establish a task force to examine the recruitment, training, and compensation of qualified mental health professionals in the community, which shall include the advantages and disadvantages of establishing a training academy, loan forgiveness program, or educational stipends offered in exchange for commitments of employment in mental health. ~~((The task force shall report back to the appropriate committees of the legislature by January 1, 1990.))~~

**Sec. 138.** RCW 71.24.410 and 1994 c 259 s 3 are each amended to read as follows:

The project established in RCW 71.24.405 must be implemented by July 1, 1995, in at least two regional support networks, ~~((with annual progress reports submitted to the appropriate committees of the legislature beginning November 1, 1994;))~~ and in all regional support networks state-wide with full implementation of the most effective and efficient practices identified by the evaluation in RCW 71.24.405 no later than July 1, 1997. ~~((In addition, the department of social and health services, the participating regional support networks, and the local mental health service providers shall report to the appropriate policy and fiscal committees of the legislature on the need for any changes in state statute, rule, policy, or procedure, and any change in federal statute, regulation, policy, or procedure to ensure the purposes specified in RCW 71.24.400 are carried out.))~~

Sec. 139. RCW 72.09.040 and 1981 c 136 s 4 are each amended to read as follows:

All powers, duties, and functions assigned to the secretary of social and health services and to the department of social and health services relating to adult correctional programs and institutions are hereby transferred to the secretary of corrections and to the department of corrections. Except as may be specifically provided, all functions of the department of social and health services relating to juvenile rehabilitation and the juvenile justice system shall remain in the department of social and health services. Where functions of the department of social and health services and the department of corrections overlap in the juvenile rehabilitation and/or juvenile justice area, the governor may allocate such functions between these departments.

~~((The secretaries of the department of social and health services and the department of corrections shall submit to the 1983 session of the Washington state legislature a joint report which addresses the question of in which agency juvenile rehabilitation and state-level juvenile justice programs should be located.))~~

Sec. 140. RCW 72.09.560 and 1995 1st sp.s. c 19 s 21 are each amended to read as follows:

~~((+))~~ The department is authorized to establish a camp for alien offenders and shall be ready to assign offenders to the camp not later than January 1, 1997. The secretary shall locate the camp within the boundaries of an existing department facility.

~~((2))~~ The secretary, in consultation with the committee established in RCW 72.09.570, shall prepare a report to the legislature by December 1, 1995, on an implementation plan for the camp. The plan shall include recommendations on meeting the following goals: (a) Expedited deportation of alien offenders; (b) reduced daily costs of incarceration; (c) enhanced public benefit through an emphasis on inmate work and exemption from education programs other than those programs necessary for offenders to understand and follow directions; (d) minimum access to privileges; and (e) maximized use of nonstate resources for the costs of incarceration.

~~(3) In preparing the plan, the secretary shall address at least the following: (a) Eligibility criteria for prompt admission to the camp; (b) whether to have a minimum and maximum length of stay in the camp; (c) operational elements including residential arrangements, inmate conduct and programming standards, and achieving maximum cooperation with the United States government to expedite deportation of alien offenders and reduce the likelihood that alien offenders who complete the camp will avoid deportation; (d) mitigating adverse impacts the camp may have on other offender programs; (e) meeting the goals set forth in this section; and (f) any state law and fiscal issues that are necessary for implementation of the camp.~~

~~(4) The department shall consult with all appropriate public safety organizations and the committee created under RCW 72.09.570 in developing the plan:))~~

**Sec. 141.** RCW 72.23.025 and 1992 c 230 s 1 are each amended to read as follows:

(1) It is the intent of the legislature to improve the quality of service at state hospitals, eliminate overcrowding, and more specifically define the role of the state hospitals. The legislature intends that eastern and western state hospitals shall become clinical centers for handling the most complicated long-term care needs of patients with a primary diagnosis of mental disorder. Over the next six years, their involvement in providing short-term, acute care, and less complicated long-term care shall be diminished in accordance with the revised responsibilities for mental health care under chapter 71.24 RCW. To this end, the legislature intends that funds appropriated for mental health programs, including funds for regional support networks and the state hospitals be used for persons with primary diagnosis of mental disorder. The legislature finds that establishment of the eastern state hospital board, the western state hospital board, and institutes for the study and treatment of mental disorders at both eastern state hospital and western state hospital will be instrumental in implementing the legislative intent.

(2)(a) The eastern state hospital board and the western state hospital board are each established. Members of the boards shall be appointed by the governor with the consent of the senate. Each board shall include:

(i) The director of the institute for the study and treatment of mental disorders established at the hospital;

(ii) One family member of a current or recent hospital resident;

(iii) One consumer of services;

(iv) One community mental health service provider;

(v) Two citizens with no financial or professional interest in mental health services;

(vi) One representative of the regional support network in which the hospital is located;

(vii) One representative from the staff who is a physician;

(viii) One representative from the nursing staff;

(ix) One representative from the other professional staff;

(x) One representative from the nonprofessional staff; and

(xi) One representative of a minority community.

(b) At least one representative listed in (a)(viii), (ix), or (x) of this subsection shall be a union member.

(c) Members shall serve four-year terms. Members of the board shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 and shall receive compensation as provided in RCW 43.03.240.

(3) The boards established under this section shall:

(a) Monitor the operation and activities of the hospital;

(b) Review and advise on the hospital budget;

(c) Make recommendations to the governor and the legislature for improving the quality of service provided by the hospital;

(d) Monitor and review the activities of the hospital in implementing the intent of the legislature set forth in this section; and

(e) ~~((Report periodically to the governor and the legislature on the implementation of the legislative intent set forth in this section; and~~

~~—(f))~~ Consult with the secretary regarding persons the secretary may select as the superintendent of the hospital whenever a vacancy occurs.

(4)(a) There is established at eastern state hospital and western state hospital, institutes for the study and treatment of mental disorders. The institutes shall be operated by joint operating agreements between state colleges and universities and the department of social and health services. The institutes are intended to conduct training, research, and clinical program development activities that will directly benefit mentally ill persons receiving treatment in Washington state by performing the following activities:

(i) Promote recruitment and retention of highly qualified professionals at the state hospitals and community mental health programs;

(ii) Improve clinical care by exploring new, innovative, and scientifically based treatment models for persons presenting particularly difficult and complicated clinical syndromes;

(iii) Provide expanded training opportunities for existing staff at the state hospitals and community mental health programs;

(iv) Promote bilateral understanding of treatment orientation, possibilities, and challenges between state hospital professionals and community mental health professionals.

(b) To accomplish these purposes the institutes may, within funds appropriated for this purpose:

(i) Enter joint operating agreements with state universities or other institutions of higher education to accomplish the placement and training of students and faculty in psychiatry, psychology, social work, occupational therapy, nursing, and other relevant professions at the state hospitals and community mental health programs;

(ii) Design and implement clinical research projects to improve the quality and effectiveness of state hospital services and operations;



(iii) Enter into agreements with community mental health service providers to accomplish the exchange of professional staff between the state hospitals and community mental health service providers;

(iv) Establish a student loan forgiveness and conditional scholarship program to retain qualified professionals at the state hospitals and community mental health providers when the secretary has determined a shortage of such professionals exists.

(c) Notwithstanding any other provisions of law to the contrary, the institutes may enter into agreements with the department or the state hospitals which may involve changes in staffing necessary to implement improved patient care programs contemplated by this section.

(d) The institutes are authorized to seek and accept public or private gifts, grants, contracts, or donations to accomplish their purposes under this section.

**Sec. 142.** RCW 72.65.210 and 1995 c 399 s 203 are each amended to read as follows:

(1) The department shall establish, by rule, inmate eligibility standards for participation in the work release program.

(2) The department shall:

(a) Conduct an annual examination of each work release facility and its security procedures;

(b) Investigate and set standards for the inmate supervision policies of each work release facility;

(c) Establish physical standards for future work release structures to ensure the safety of inmates, employees, and the surrounding communities;

(d) Evaluate its recordkeeping of serious infractions to determine if infractions are properly and consistently assessed against inmates eligible for work release;

(e) ~~((Report to the legislature on a case management procedure to evaluate and determine those inmates on work release who are in need of treatment.))~~ The department shall establish ~~((in the report))~~ a written treatment plan best suited to the inmate's needs, cost, and the relationship of community placement and community corrections officers to a system of case management;

(f) Adopt a policy to encourage businesses employing work release inmates to contact the appropriate work release facility whenever an inmate is absent from his or her work schedule. The department of corrections shall provide each employer with written information and instructions on who should be called if a work release employee is absent from work or leaves the job site without authorization; and

(g) Develop a siting policy, in conjunction with cities, counties, community groups, and the department of community, trade, and economic development for the establishment of additional work release facilities. Such policy shall include at least the following elements: (i) Guidelines for appropriate site selection of work-release facilities; (ii) notification requirements to local government and

community groups of intent to site a work release facility; and (iii) guidelines for effective community relations by the work release program operator.

The department shall comply with the requirements of this section by July 1, 1990.

Sec. 143. RCW 74.04.025 and 1983 1st ex.s. c 41 s 33 are each amended to read as follows:

(1) The department and the office of administrative hearings shall ~~((insure))~~ ensure that bilingual services are provided to non-English speaking applicants and recipients. The services shall be provided to the extent necessary to assure that non-English speaking persons are not denied, or unable to obtain or maintain, services or benefits because of their inability to speak English.

(2) If the number of non-English speaking applicants or recipients sharing the same language served by any community service office client contact job classification equals or exceeds fifty percent of the average caseload of a full-time position in such classification, the department shall, through attrition, employ bilingual personnel to serve such applicants or recipients.

(3) Regardless of the applicant or recipient caseload of any community service office, each community service office shall ensure that bilingual services required to supplement the community service office staff are provided through contracts with interpreters, local agencies, or other community resources.

(4) Initial client contact materials shall inform clients in all primary languages of the availability of interpretation services for non-English speaking persons. Basic informational pamphlets shall be translated into all primary languages.

(5) To the extent all written communications directed to applicants or recipients are not in the primary language of the applicant or recipient, the department and the office of administrative hearings shall include with the written communication a notice in all primary languages of applicants or recipients describing the significance of the communication and specifically how the applicants or recipients may receive assistance in understanding, and responding to if necessary, the written communication. The department shall assure that sufficient resources are available to assist applicants and recipients in a timely fashion with understanding, responding to, and complying with the requirements of all such written communications.

(6) As used in this section, "primary languages" includes but is not limited to Spanish, Vietnamese, Cambodian, Laotian, and Chinese.

~~((7) The department shall report to the legislature by July 1, 1984, on the cost-effectiveness of translating all written forms, notices, and other documents provided to non-English speaking applicants or recipients into primary languages:))~~

Sec. 144. RCW 74.09.415 and 1990 c 296 s 2 are each amended to read as follows:

(1) There is hereby established a program to be known as the children's health program.

To the extent of available funds:

(a) Health care services may be provided to persons who are under eighteen years of age with household incomes at or below the federal poverty level and not otherwise eligible for medical assistance or the limited casualty program for the medically needy.

(b) The determination of eligibility of recipients for health care services shall be the responsibility of the department. The application process shall be easy to understand and, to the extent possible, applications shall be made available at local schools and other appropriate locations. The department shall make eligibility determinations within the timeframes for establishing eligibility for children on medical assistance, as defined by RCW 74.09.510.

(c) The amount, scope, and duration of health care services provided to eligible children under the children's health program shall be the same as that provided to children under medical assistance, as defined in RCW 74.09.520.

(2) The legislature is interested in assessing the effectiveness of the prenatal care program. However, the legislature recognizes the cost and complexity associated with such assessment.

The legislature accepts the effectiveness of prenatal and maternity care at improving birth outcomes when these services are received by eligible persons. Therefore, the legislature intends to focus scarce assessment resources to determine the extent to which support services such as child care, psychosocial and nutritional assessment and counseling, case management, transportation, and other support services authorized by chapter 296, Laws of 1990, result in receipt of prenatal and maternity care by eligible persons.

The University of Washington shall conduct a study, based on a statistically significant state-wide sampling of data, to evaluate the effectiveness of the maternity care access program set forth in RCW 74.09.760 through 74.09.820 based on the principles set forth in RCW 74.09.770.

The University of Washington shall develop a plan and budget for the study in consultation with the joint legislative ((budget)) audit and review committee. The joint legislative ((budget)) audit and review committee shall also monitor the progress of the study.

The department of social and health services shall make data and other information available as needed to the University of Washington as required to conduct this study.

The study shall determine:

(a) The characteristics of women receiving services, including health risk factors;

(b) The extent to which access to maternity care and support services have improved in this state as a result of this program;

(c) The utilization of services and birth outcomes for women and infants served by this program by type of practitioner;

(d) The extent to which birth outcomes for women receiving services under this program have improved in comparison to birth outcomes of nonmedicaid mothers;

(e) The impact of increased medicaid reimbursement to physicians on provider participation;

(f) The difference between costs for services provided under this program and medicaid reimbursement for the services;

(g) The gaps in services, if any, that may still exist for women and their infants as defined by RCW 74.09.790 (1) and (4) served by this program, excluding pregnant substance abusers, and women covered by private health insurance; and

(h) The number and mix of services provided to eligible women as defined by subsection (2)(g) of this section and the effect on birth outcomes as compared to nonmedicaid birth outcomes.

~~((Results of the study shall be submitted to the legislative budget committee and appropriate committees of the legislature, by December 1 of each year through December 1, 1994, beginning with December 1, 1991.))~~

**Sec. 145.** RCW 74.09.520 and 1995 1st sp.s. c 18 s 39 are each amended to read as follows:

(1) The term "medical assistance" may include the following care and services: (a) inpatient hospital services; (b) outpatient hospital services; (c) other laboratory and x-ray services; (d) nursing facility services; (e) physicians' services, which shall include prescribed medication and instruction on birth control devices; (f) medical care, or any other type of remedial care as may be established by the secretary; (g) home health care services; (h) private duty nursing services; (i) dental services; (j) physical and occupational therapy and related services; (k) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (l) personal care services, as provided in this section; (m) hospice services; (n) other diagnostic, screening, preventive, and rehabilitative services; and (o) like services when furnished to a child by a school district in a manner consistent with the requirements of this chapter. For the purposes of this section, the department may not cut off any prescription medications, oxygen supplies, respiratory services, or other life-sustaining medical services or supplies.

"Medical assistance," notwithstanding any other provision of law, shall not include routine foot care, or dental services delivered by any health care provider, that are not mandated by Title XIX of the social security act unless there is a specific appropriation for these services.

(2) The department shall amend the state plan for medical assistance under Title XIX of the federal social security act to include personal care services, as defined in 42 C.F.R. 440.170(f), in the categorically needy program.

(3) The department shall adopt, amend, or rescind such administrative rules as are necessary to ensure that Title XIX personal care services are provided to eligible persons in conformance with federal regulations.

(a) These administrative rules shall include financial eligibility indexed according to the requirements of the social security act providing for medicaid eligibility.

(b) The rules shall require clients be assessed as having a medical condition requiring assistance with personal care tasks. Plans of care must be reviewed by a nurse.

(4) The department shall design and implement a means to assess the level of functional disability of persons eligible for personal care services under this section. The personal care services benefit shall be provided to the extent funding is available according to the assessed level of functional disability. Any reductions in services made necessary for funding reasons should be accomplished in a manner that assures that priority for maintaining services is given to persons with the greatest need as determined by the assessment of functional disability.

~~(5) (The department shall report to the appropriate fiscal committees of the legislature on the utilization and associated costs of the personal care option under Title XIX of the federal social security act, as defined in 42 C.F.R. 440.170(f), in the categorically needy program. This report shall be submitted by January 1, 1990, and submitted on a yearly basis thereafter.~~

~~—(6))~~ Effective July 1, 1989, the department shall offer hospice services in accordance with available funds.

~~((7))~~ (6) For Title XIX personal care services administered by aging and adult services administration of the department, the department shall contract with area agencies on aging:

(a) To provide case management services to individuals receiving Title XIX personal care services in their own home; and

(b) To reassess and reauthorize Title XIX personal care services or other home and community services as defined in RCW 74.39A.008 in home or in other settings for individuals consistent with the intent of this section:

(i) Who have been initially authorized by the department to receive Title XIX personal care services or other home and community services as defined in RCW 74.39A.008; and

(ii) Who, at the time of reassessment and reauthorization, are receiving such services in their own home.

~~((8))~~ (7) In the event that an area agency on aging is unwilling to enter into or satisfactorily fulfill a contract to provide these services, the department is authorized to:

(a) Obtain the services through competitive bid; and

(b) Provide the services directly until a qualified contractor can be found.

Sec. 146. RCW 74.13.045 and 1991 c 340 s 2 are each amended to read as follows:

The department shall develop and implement an informal, nonadversarial complaint resolution process to be used by clients of the department, foster parents, and other affected individuals who have complaints regarding a department policy or procedure, or the application of such a policy or procedure, related to programs administered under this chapter. The process shall not apply in circumstances where the complainant has the right under Title 13, 26, or 74 RCW to seek resolution of the complaint through judicial review or through an adjudicative proceeding.

Nothing in this section shall be construed to create substantive or procedural rights in any person. Participation in the complaint resolution process shall not entitle any person to an adjudicative proceeding under chapter 34.05 RCW or to superior court review. Participation in the process shall not affect the right of any person to seek other statutorily or constitutionally permitted remedies.

The department shall develop procedures to assure that clients and foster parents are informed of the availability of the complaint resolution process and how to access it. The department shall incorporate information regarding the complaint resolution process into the training for foster parents and caseworkers.

The department shall compile complaint resolution data including the nature of the complaint and the outcome of the process. ~~((The department shall submit semiannual reports, due January and July of each year, beginning July 1992, to the senate children and family services committee and the house of representatives human services committee.))~~

**Sec. 147.** RCW 74.13.055 and 1982 c 118 s 1 are each amended to read as follows:

The department shall adopt rules pursuant to chapter 34.05 RCW which establish goals as to the maximum number of children who will remain in foster care for a period of longer than twenty-four months. The department shall also work cooperatively with the major private child care providers to assure that a partnership plan for utilizing the resources of the public and private sector in all matters pertaining to child welfare is developed and implemented. ~~((The department shall report to the legislature, no later than January 15, 1983, on the implementation of the partnership plan.))~~

**Sec. 148.** RCW 74.13.260 and 1990 c 284 s 4 are each amended to read as follows:

Regular on-site monitoring of foster homes to assure quality care improves care provided to children in family foster care. An on-site monitoring program shall be established by the department to assure quality care and regularly identify problem areas. ~~((The department shall report to the legislature by June 1 of each year, beginning with June 1, 1991, the results of the monitoring, including identified problem areas, and make policy recommendations to improve the quality of foster care based on the results of the monitoring.))~~ Monitoring shall be done by the department on a random sample basis of no less than ten percent

of the total licensed family foster homes licensed by the department on July 1 of each year.

**Sec. 149.** RCW 74.14A.050 and 1993 c 508 s 7 are each amended to read as follows:

The secretary shall:

(1)(a) Consult with relevant qualified professionals to develop a set of minimum guidelines to be used for identifying all children who are in a state-assisted support system, whether at-home or out-of-home, who are likely to need long-term care or assistance, because they face physical, emotional, medical, mental, or other long-term challenges;

(b) The guidelines must, at a minimum, consider the following criteria for identifying children in need of long-term care or assistance:

(i) Placement within the foster care system for two years or more;

(ii) Multiple foster care placements;

(iii) Repeated unsuccessful efforts to be placed with a permanent adoptive family;

(iv) Chronic behavioral or educational problems;

(v) Repetitive criminal acts or offenses;

(vi) Failure to comply with court-ordered disciplinary actions and other imposed guidelines of behavior, including drug and alcohol rehabilitation; and

(vii) Chronic physical, emotional, medical, mental, or other similar conditions necessitating long-term care or assistance;

(2) Develop programs that are necessary for the long-term care of children and youth that are identified for the purposes of this section. Programs must: (a) Effectively address the educational, physical, emotional, mental, and medical needs of children and youth; and (b) incorporate an array of family support options, to individual needs and choices of the child and family. The programs must be ready for implementation by January 1, 1995;

(3) Conduct an evaluation of all children currently within the foster care agency caseload to identify those children who meet the criteria set forth in this section. The evaluation shall be completed by January 1, 1994. All children entering the foster care system after January 1, 1994, must be evaluated for identification of long-term needs within thirty days of placement;

(4) Study and develop a comprehensive plan for the evaluation and identification of all children and youth in need of long-term care or assistance, including, but not limited to, the mentally ill, developmentally disabled, medically fragile, seriously emotionally or behaviorally disabled, and physically impaired;

(5) Study and develop a plan for the children and youth in need of long-term care or assistance to ensure the coordination of services between the department's divisions and between other state agencies who are involved with the child or youth;

(6) Study and develop guidelines for transitional services, between long-term care programs, based on the person's age or mental, physical, emotional, or medical condition; and

(7) Study and develop a statutory proposal for the emancipation of minors ~~((and report its findings and recommendations to the legislature by January 1, 1994)).~~

Sec. 150. RCW 74.20.340 and 1979 ex.s. c 171 s 25 are each amended to read as follows:

The department shall develop workload standards for each employee classification involved in support enforcement activities for each category of support enforcement cases. ~~((The department shall submit the workload standards and a preliminary forecast of the level of staffing required to meet the workload standards to the senate ways and means committee and the house of representatives revenue and appropriations committees six months before the regular legislative sessions and whenever this information is requested by the senate ways and means committee and the house of representatives revenue and appropriations committees.))~~

Sec. 151. RCW 74.41.070 and 1987 c 409 s 5 are each amended to read as follows:

~~((+))~~ The area agencies administering respite care programs shall maintain data which indicates demand for respite care, and which includes information on in-home and out-of-home day care and in-home and out-of-home overnight care demand.

~~((2))~~ ~~The department shall provide a progress report to the legislature on the respite care programs authorized in this chapter. The report shall at least include a comparison of the relative cost-effectiveness of the services provided under this chapter with all other programs and services which are intended to forestall institutionalization. In addition, the report shall include a similar comparison between in-home and out-of-home respite care services. The department shall make recommendations on the inclusion of respite care services under the senior citizens act for delivery and funding of respite care services described in this chapter. The report shall be provided to the legislature not later than thirty days prior to the 1989 legislative session.)~~

Sec. 152. RCW 75.24.060 and 1985 c 256 s 1 are each amended to read as follows:

It is the policy of the state to improve state oyster reserves so that they are productive and yield a revenue sufficient for their maintenance. In fixing the price of oysters and other shellfish sold from the reserves, the director shall take into consideration this policy. It is also the policy of the state to maintain the oyster reserves to furnish shellfish to growers and processors and to stock public beaches.

Shellfish may be harvested from state oyster reserves for personal use as prescribed by rule of the director.



The department shall periodically inventory the state oyster reserves and assign the reserve lands into management categories:

- (1) Native Olympia oyster broodstock reserves;
- (2) Commercial shellfish harvesting zones;
- (3) Commercial shellfish propagation zones designated for long-term leasing to private aquaculturists;
- (4) Public recreational shellfish harvesting zones;
- (5) Unproductive land.

The department shall manage each category of oyster reserve land to maximize the sustained yield production of shellfish consistent with the purpose for establishment of each management category.

The department shall develop an oyster reserve management plan, to include recommendations for leasing reserve lands, in coordination with the shellfish industry, by January 1, 1986. ~~((The report shall be presented to the house and senate committees on natural resources.))~~

The director shall protect, reseed, improve the habitat of, and replant state oyster reserves and issue cultch permits.

**Sec. 153.** RCW 75.28.770 and 1994 c 264 s 46 are each amended to read as follows:

The department shall evaluate and recommend, in consultation with the Indian tribes, salmon fishery management strategies and gear types, as well as a schedule for implementation, that will minimize the impact of commercial and recreational fishing in the mixed stock fishery on critical and depressed wild stocks of salmonids. As part of this evaluation, the department, in conjunction with the commercial and recreational fishing industries, shall evaluate commercial and recreational salmon fishing gear types developed by these industries. ~~((The department shall present status reports to the appropriate committees of the legislature by December 31 of each year in 1993, 1994, and 1995, and shall present the final evaluation and recommendations by December 31, 1996.))~~

**Sec. 154.** RCW 75.30.480 and 1994 c 260 s 20 are each amended to read as follows:

The department, with input from Dungeness crab—coastal fishery licensees and processors, shall prepare a resource plan to achieve even-flow harvesting and long-term stability of the coastal Dungeness crab resource. The plan may include pot limits, further reduction in the number of vessels, individual quotas, trip limits, area quotas, or other measures as determined by the department. ~~((The plan shall be submitted to the appropriate standing committees of the legislature by December 1, 1995.))~~

**Sec. 155.** RCW 75.50.100 and 1995 1st sp.s. c 2 s 39 are each amended to read as follows:

The dedicated regional fisheries enhancement group account is created in the custody of the state treasurer. Only the commission or the commission's designee

may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

A surcharge of one dollar shall be collected on each recreational personal use food fish license sold in the state. A surcharge of one hundred dollars shall be collected on each commercial salmon fishery license, each salmon delivery license, and each salmon charter license sold in the state. ~~((The department shall study methods for collecting and making available, an annual list, including names and addresses, of all persons who obtain recreational and commercial salmon fishing licenses. This list may be used to assist formation of the regional fisheries enhancement groups and allow the broadest participation of license holders in enhancement efforts. The results of the study shall be reported to the house of representatives fisheries and wildlife committee and the senate environment and natural resources committee by October 1, 1990.))~~ All receipts shall be placed in the regional fisheries enhancement group account and shall be used exclusively for regional fisheries enhancement group projects for the purposes of RCW 75.50.110. Funds from the regional fisheries enhancement group account shall not serve as replacement funding for department operated salmon projects that exist on January 1, 1991.

All revenue from the department's sale of salmon carcasses and eggs that return to group facilities shall be deposited in the regional fisheries enhancement group account for use by the regional fisheries enhancement group that produced the surplus. The commission shall adopt rules to implement this section pursuant to chapter 34.05 RCW.

**Sec. 156.** RCW 75.52.110 and 1993 sp.s. c 2 s 53 are each amended to read as follows:

The department shall chair a technical committee, which shall review the preparation of enhancement plans and construction designs for a Cedar river sockeye spawning channel. The technical committee shall consist of not more than eight members: One representative each from the department, national marine fisheries service, United States fish and wildlife service, and Muckleshoot Indian tribe; and four representatives from the public utility described in RCW 75.52.130. The technical committee will be guided by a policy committee, also to be chaired by the department, which shall consist of not more than six members: One representative from the department, one from the Muckleshoot Indian tribe, and one from either the national marine fisheries service or the United States fish and wildlife service; and three representatives from the public utility described in RCW 75.52.130. The policy committee shall ~~((present a progress report to the senate and house of representatives natural resources and environment committees by January 1, 1990, and shall))~~ oversee the operation and evaluation of the spawning channel. The policy committee will continue its oversight until the policy committee concludes that the channel is meeting the production goals specified in RCW 75.52.120.

**Sec. 157.** RCW 75.54.010 and 1993 sp.s. c 2 s 83 are each amended to read as follows:

There is created within the department of fish and wildlife the Puget Sound recreational salmon and marine fish enhancement program. The department of fish and wildlife shall identify a coordinator for the program who shall act as spokesperson for the program and shall:

(1) Coordinate the activities of the Puget Sound recreational salmon and marine fish enhancement program, including the Lake Washington salmon fishery; and

(2) ~~((Provide reports as needed to the legislature and the public; and~~  
~~—(3)))~~ Work within and outside of the department to achieve the goals stated in this chapter.

**Sec. 158.** RCW 77.12.690 and 1987 c 506 s 55 are each amended to read as follows:

The migratory waterfowl art committee is responsible for the selection of the annual migratory waterfowl stamp design and shall provide the design to the department. If the committee does not perform this duty within the time frame necessary to achieve proper and timely distribution of the stamps to license dealers, the director shall initiate the art work selection for that year. The committee shall create collector art prints and related artwork, utilizing the same design as provided to the department. The administration, sale, distribution, and other matters relating to the prints and sales of stamps with prints and related artwork shall be the responsibility of the migratory waterfowl art committee.

The total amount brought in from the sale of prints and related artwork shall be deposited in the state wildlife fund. The costs of producing and marketing of prints and related artwork, including administrative expenses mutually agreed upon by the committee and the director, shall be paid out of the total amount brought in from sales of those same items. Net funds derived from the sale of prints and related artwork shall be used by the director to contract with one or more appropriate individuals or nonprofit organizations for the development of waterfowl propagation projects within Washington which specifically provide waterfowl for the Pacific flyway. The department shall not contract with any individual or organization that obtains compensation for allowing waterfowl hunting except if the individual or organization does not permit hunting for compensation on the subject property.

The migratory waterfowl art committee shall have an annual audit of its finances conducted by the state auditor and shall furnish a copy of the audit to the commission ~~((and to the natural resources committees of the house and senate)).~~

**Sec. 159.** RCW 77.12.710 and 1995 c 399 s 208 are each amended to read as follows:

The legislature hereby directs the department to determine the feasibility and cost of doubling the state-wide game fish production by the year 2000. The department shall seek to equalize the effort and investment expended on

anadromous and resident game fish programs. The department shall provide the legislature with a specific plan for legislative approval that will outline the feasibility of increasing game fish production by one hundred percent over current levels by the year 2000. The plan shall contain specific provisions to increase both hatchery and naturally spawning game fish to a level that will support the production goal established in this section consistent with department policies. Steelhead trout, searun cutthroat trout, resident trout, and warmwater fish producing areas of the state shall be included in the plan. ~~((The department shall provide the plan to the house of representatives and senate ways and means, environment and natural resources, environmental affairs, fisheries and wildlife, and natural resources committees by December 31, 1990.))~~

The plan shall include the following critical elements:

- (1) Methods of determining current catch and production, and catch and production in the year 2000;
- (2) Methods of involving fishing groups, including Indian tribes, in a cooperative manner;
- (3) Methods for using low capital cost projects to produce game fish as inexpensively as possible;
- (4) Methods for renovating and modernizing all existing hatcheries and rearing ponds to maximize production capability;
- (5) Methods for increasing the productivity of natural spawning game fish;
- (6) Application of new technology to increase hatchery and natural productivity;
- (7) Analysis of the potential for private contractors to produce game fish for public fisheries;
- (8) Methods to optimize public volunteer efforts and cooperative projects for maximum efficiency;
- (9) Methods for development of trophy game fish fisheries;
- (10) Elements of coordination with the Pacific Northwest Power Council programs to ensure maximum Columbia river benefits;
- (11) The role that should be played by private consulting companies in developing and implementing the plan;
- (12) Coordination with federal fish and wildlife agencies, Indian tribes, and department fish production programs;
- (13) Future needs for game fish predator control measures;
- (14) Development of disease control measures;
- (15) Methods for obtaining access to waters currently not available to anglers; and
- (16) Development of research programs to support game fish management and enhancement programs.

The department, in cooperation with the department of revenue, shall assess various funding mechanisms and make recommendations to the legislature in the plan. The department, in cooperation with the department of community, trade, and economic development, shall prepare an analysis of the economic benefits to

the state that will occur when the game fish production is increased by one hundred percent in the year 2000.

**Sec. 160.** RCW 77.32.060 and 1996 c 101 s 9 are each amended to read as follows:

The director may adopt rules establishing the amount a license dealer may charge and keep for each license, tag, permit, stamp, or raffle ticket issued. The director shall establish the amount to be retained by dealers to be at least fifty cents for each license issued, and twenty-five cents for each tag, permit, stamp, or raffle ticket, issued. ~~((The director shall report to the next regular session of the legislature explaining any increase in the amount retained by license dealers.))~~ Fees retained by dealers shall be uniform throughout the state.

**Sec. 161.** RCW 78.56.160 and 1994 c 232 s 16 are each amended to read as follows:

(1) Until June 30, 1996, there shall be a moratorium on metals mining and milling operations using the heap leach extraction process. The department of natural resources and the department of ecology shall jointly review the existing laws and regulations pertaining to the heap leach extraction process for their adequacy in safeguarding the environment ~~((and shall report their findings to the legislature by December 30, 1994)).~~

(2) Metals mining using the process of in situ extraction is permanently prohibited in the state of Washington.

**Sec. 162.** RCW 79.01.295 and 1993 sp.s. c 4 s 5 are each amended to read as follows:

(1) By December 31, 1993, the department of fish and wildlife ~~((and the department of fisheries))~~ shall ~~((each))~~ develop goals for the wildlife and fish that ~~((these agencies respectively))~~ this agency manages, to preserve, protect, and perpetuate wildlife and fish on shrub steppe habitat or on lands that are presently agricultural lands, rangelands, or grazable woodlands. These goals shall be consistent with the maintenance of a healthy ecosystem.

(2) By July 31, 1993, the conservation commission shall appoint a technical advisory committee to develop standards that achieve the goals developed in subsection (1) of this section. The committee members shall include but not be limited to technical experts representing the following interests: Agriculture, academia, range management, utilities, environmental groups, commercial and recreational fishing interests, the Washington rangelands committee, Indian tribes, the department of fish and wildlife, ~~((the department of fisheries.))~~ the department of natural resources, the department of ecology, conservation districts, and the department of agriculture. A member of the conservation commission shall chair the committee.

(3) By December 31, 1994, the committee shall develop standards to meet the goals developed under subsection (1) of this section. These standards shall not conflict with the recovery of wildlife or fish species that are listed or proposed for listing under the federal endangered species act. These standards shall be utilized

to the extent possible in development of coordinated resource management plans to provide a level of management that sustains and perpetuates renewable resources, including fish and wildlife, riparian areas, soil, water, timber, and forage for livestock and wildlife. Furthermore, the standards are recommended for application to model watersheds designated by the Northwest power planning council in conjunction with the conservation commission. The maintenance and restoration of sufficient habitat to preserve, protect, and perpetuate wildlife and fish shall be a major component included in the standards and coordinated resource management plans. Application of standards to privately owned lands is voluntary and may be dependent on funds to provide technical assistance through conservation districts.

(4) The conservation commission shall approve the standards and shall provide them to the departments of natural resources and fish and wildlife, each of the conservation districts, and Washington State University cooperative extension service(~~(, and the appropriate committees of the legislature)~~). The conservation districts shall make these standards available to the public and for coordinated resource management planning. Application to private lands is voluntary.

(5) The department of natural resources shall implement practices necessary to meet the standards developed pursuant to this section on department managed agricultural and grazing lands, consistent with the trust mandate of the Washington state Constitution and Title 79 RCW. The standards may be modified on a site-specific basis as needed to achieve the fish and wildlife goals, and as determined by the department of (~~(fisheries or)~~) fish and wildlife, and the department of natural resources. Existing lessees shall be provided an opportunity to participate in any site-specific field review. Department agricultural and grazing leases issued after December 31, 1994, shall be subject to practices to achieve the standards that meet those developed pursuant to this section.

**Sec. 163.** RCW 80.01.090 and 1987 c 505 s 77 are each amended to read as follows:

All proceedings of the commission and all documents and records in its possession shall be public records, and it shall adopt and use an official seal. (~~(Subject to RCW 40.07.040, the commission shall make and submit to the governor and the legislature a biennial report containing a statement of the transactions and proceedings of its office, together with the information gathered by the commission and such other facts, suggestions, and recommendations as the governor may require or the legislature request.)~~)

**Sec. 164.** RCW 81.04.520 and 1990 c 21 s 8 are each amended to read as follows:

The commission, together with the Hanford low-level radioactive waste disposal site operator and other state agencies and parties as necessary, shall study and assess the need for procedures that include, but are not limited to: Assuring that the operator's rates are fair, just, reasonable, and sufficient considering the

value of the operator's leasehold and license interests, the unique nature of its business operations, and the operator's liability associated with the site and its investment incurred over the term of its operations, and the rate of return equivalent to that earned by comparable enterprises; and for ensuring that the commission's costs of regulation are recovered when the federal low-level waste policy act amendment of 1985 results in the regional site being the exclusive site option for Northwest low-level waste compact generators, after January 1, 1993. (~~The commission shall issue its report for such procedures, containing comments by the operator and other parties, to the legislature by December 1, 1990, for its consideration.~~) If, following receipt of the study, the legislature authorizes the commission to regulate the operator's rates, such rates shall not take effect until January 1, 1993, when the regional site will be the exclusive site option for Northwest low-level waste compact generators.

**Sec. 165.** RCW 81.104.110 and 1991 c 318 s 10 and 1991 c 309 s 3 are each reenacted and amended to read as follows:

The legislature recognizes that the planning processes described in RCW 81.104.100 provide a recognized framework for guiding high capacity transportation studies. However, the process cannot guarantee appropriate decisions unless key study assumptions are reasonable.

To assure appropriate system plan assumptions and to provide for review of system plan results, an expert review panel shall be appointed to provide independent technical review for development of any system plan which is to be funded in whole or in part by the imposition of any voter-approved local option funding sources enumerated in RCW 81.104.140.

(1) The expert review panel shall consist of five to ten members who are recognized experts in relevant fields, such as transit operations, planning, emerging transportation technologies, engineering, finance, law, the environment, geography, economics, and political science.

(2) The expert review panel shall be selected cooperatively by the chair of the legislative transportation committee, the secretary of the department of transportation, and the governor to assure a balance of disciplines. In the case of counties adjoining another state or Canadian province the expert review panel membership shall be selected cooperatively with representatives of the adjoining state or Canadian province.

(3) The chair of the expert review panel shall be designated by the appointing authorities.

(4) The expert review panel shall serve without compensation but shall be reimbursed for expenses according to chapter 43.03 RCW.

(5) The panel shall carry out the duties set forth in subsections (6) and (7) of this section until the date on which an election is held to consider the high capacity transportation system and financing plans. Funds appropriated for expenses of the expert panel shall be administered by the department of transportation.

(6) The expert panel shall review all reports required in RCW 81.104.100(2) and shall concentrate on service modes and concepts, costs, patronage and financing evaluations.

(7) The expert panel shall provide timely reviews and comments on individual reports and study conclusions to ~~((the governor, the legislative transportation committee,))~~ the department of transportation, the regional transportation planning organization, the joint regional policy committee, and the submitting lead transit agency. In the case of counties adjoining another state or Canadian province, the expert review panel shall provide its reviews, comments, and conclusions to the representatives of the adjoining state or Canadian province.

(8) The legislative transportation committee shall contract for consulting services for expert review panels. The amount of consultant support shall be negotiated with each expert review panel by the legislative transportation committee and shall be paid from appropriations for that purpose from the high capacity transportation account.

**Sec. 166.** RCW 81.53.281 and 1987 c 257 s I are each amended to read as follows:

There is hereby created in the state treasury a "grade crossing protective fund," to which shall be transferred all moneys appropriated for the purpose of carrying out the provisions of RCW 81.53.261, 81.53.271, 81.53.281, 81.53.291, and 81.53.295. At the time the commission makes each allocation of cost to said grade crossing protective fund, it shall certify that such cost shall be payable out of said fund. When federal-aid highway funds are not involved, the railroad shall, upon completion of the installation of any such signal or other protective device and related work, present its claim for reimbursement for the cost of installation and related work from said fund of the amount allocated thereto by the commission. The annual cost of maintenance shall be presented and paid in a like manner. When federal-aid highway funds are involved, the department of transportation shall, upon entry of an order by the commission requiring the installation or upgrading of a grade crossing protective device, submit to the commission an estimate for the cost of the proposed installation and related work. Upon receipt of the estimate the commission shall pay to the department of transportation the percentage of the estimate specified in RCW 81.53.295, as now or hereafter amended, to be used as the grade crossing protective fund portion of the cost of the installation and related work. The commission is hereby authorized to recover administrative costs from said fund in an amount not to exceed three percent of the direct appropriation provided for any biennium, and in the event administrative costs exceed three percent of the appropriation, the excess shall be chargeable to regulatory fees paid by railroads pursuant to RCW 81.24.010.

~~((Within ninety days of the end of each fiscal year, the commission shall report to the legislative transportation committee, and the senate and house committees on transportation, the status of the grade crossing protective fund, including revenue sources, fund balances, and expenditures.))~~



The office of financial management shall direct the state treasurer to transfer to the motor vehicle fund an amount not to exceed \$1,331,000 from the grade crossing protective fund for the 1987-89 fiscal biennium.

**Sec. 167.** RCW 81.80.450 and 1995 c 399 s 212 are each amended to read as follows:

(1) The department of community, trade, and economic development, in conjunction with the utilities and transportation commission and the department of ecology, shall evaluate the effect of exempting motor vehicles transporting recovered materials from rate regulation as provided under RCW 81.80.440. The evaluation shall, at a minimum, describe the effect of such exemption on:

(a) The cost and timeliness of transporting recovered materials within the state;

(b) The volume of recovered materials transported within the state;

(c) The number of safety violations and traffic accidents related to transporting recovered materials within the state; and

(d) The availability of service related to transporting recovered materials from rural areas of the state.

(2) ~~((The department shall report the results of its evaluation to the appropriate standing committees of the legislature by October 1, 1993.~~

~~—(3))~~ The commission shall adopt rules requiring persons transporting recovered materials to submit information required under RCW 70.95.280. In adopting such rules, the commission shall include procedures to ensure the confidentiality of proprietary information.

**Sec. 168.** RCW 82.33A.010 and 1996 c 152 s 2 are each amended to read as follows:

(1) The economic climate council is hereby created.

(2) The council shall select a series of no more than ten benchmarks that characterize the competitive environment of the state. The benchmarks should be indicators of the cost of doing business; the education and skills of the work force; a sound infrastructure; and the quality of life. In selecting the appropriate benchmarks, the council shall use the following criteria:

(a) The availability of comparative information for other states and countries;

(b) The timeliness with which benchmark information can be obtained; and

(c) The accuracy and validity of the benchmarks in measuring the economic climate indicators named in this section.

~~((The council shall report to the legislature by September 30, 1996, on the benchmarks selected under this subsection (2).))~~

(3) ~~((Twice))~~ Each year the council shall prepare an official state economic climate report on the present status of benchmarks, changes in the benchmarks since the previous report, and the reasons for the changes. The reports shall include current benchmark comparisons with other states and countries, and an analysis of factors related to the benchmarks that may affect the ability of the state to compete economically at the national and international level.

