

NEW SECTION. Sec. 34. Sections 9 through 31 of this act shall take effect January 1, 1989.

Passed the House April 26, 1987.

Passed the Senate April 26, 1987.

Approved by the Governor May 18, 1987, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 18, 1987.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to part of section 5, Second Substitute House Bill No. 684 entitled:

"AN ACT Relating to criminal sentencing"

Section 5 of this bill is intended to clarify legislative intent to prohibit multiple sentences for persons committing crimes that encompass the same criminal conduct. Such sentences are served concurrently but are counted separately for the purposes of determining offenders' sentencing scores for subsequent criminal acts.

During the legislative process, section 5 was amended twice to accomplish the same end. The language of the two amendments is incompatible and signing the bill in this form would have the unintended consequence of lowering offender scores for certain cases.

With the exception of part of section 5, Second Substitute House Bill No. 684 is approved."

CHAPTER 457

[Substitute House Bill No. 430]

EMPLOYEE COOPERATIVE CORPORATIONS ACT

AN ACT Relating to authorizing and regulating employee cooperative corporations; amending RCW 21.20.320; adding a new chapter to Title 23 RCW; adding a new section to chapter 43.63A RCW; and creating a new section.

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

NEW SECTION. Sec. 1. This chapter may be cited as the employee cooperative corporations act.

NEW SECTION. Sec. 2. For the purposes of this chapter, the terms defined in this section have the meanings given:

(1) "Employee cooperative" means a corporation that has elected to be governed by the provisions of this chapter.

(2) "Member" means a natural person who has been accepted for membership in, and owns a membership share issued by an employee cooperative.

(3) "Patronage" means the amount of work performed as a member of an employee cooperative, measured in accordance with the articles of incorporation and bylaws.

(4) "Written notice of allocation" means a written instrument which discloses to a member the stated dollar amount of the member's patronage

allocation, and the terms for payment of that amount by the employee cooperative.

NEW SECTION. Sec. 3. Any corporation organized under the laws of this state may elect to be governed as an employee cooperative under the provisions of this chapter, by so stating in its articles of incorporation, or articles of amendment filed in accordance with Title 23A RCW.

A corporation so electing shall be governed by all provisions of Title 23A RCW, except chapter 23A.20 RCW, and except as otherwise provided in this chapter.

NEW SECTION. Sec. 4. An employee cooperative may revoke its election under this chapter by a vote of two-thirds of the members and through articles of amendment filed with the secretary of state in accordance with chapter 23A.16 RCW.

NEW SECTION. Sec. 5. An employee cooperative may include the word "cooperative" or "co-op" in its corporate name.

NEW SECTION. Sec. 6. (1) The articles of incorporation or the by-laws shall establish qualifications and the method of acceptance and termination of members. No person may be accepted as a member unless employed by the employee cooperative on a full-time or part-time basis.

(2) An employee cooperative shall issue a class of voting stock designated as "membership shares." Each member shall own only one membership share, and only members may own these shares.

(3) Membership shares shall be issued for a fee as determined from time to time by the directors. RCW 23A.08.140 and 23A.08.200 do not apply to such membership shares.

Members of an employee cooperative shall have all the rights and responsibilities of stockholders of a corporation organized under Title 23A RCW, except as otherwise provided in this chapter.

NEW SECTION. Sec. 7. (1) No capital stock other than membership shares shall be given voting power in an employee cooperative, except as otherwise provided in this chapter, or in the articles of incorporation.

(2) The power to amend or repeal bylaws of an employee cooperative shall be in the members only.

(3) Except as otherwise permitted by RCW 23A.16.030, no capital stock other than membership shares shall be permitted to vote on any amendment to the articles of incorporation.

NEW SECTION. Sec. 8. (1) The net earnings or losses of an employee cooperative shall be apportioned and distributed at the times and in the manner as the articles of incorporation or bylaws shall specify. Net earnings declared as patronage allocations with respect to a period of time, and paid or credited to members, shall be apportioned among the members in accordance with the ratio which each member's patronage during the period involved bears to total patronage by all members during that period.

(2) The apportionment, distribution, and payment of net earnings required by subsection (1) of this section may be in cash, credits, written notices of allocation, or capital stock issued by the employee cooperative.

NEW SECTION. Sec. 9. (1) Any employee cooperative may establish through its articles of incorporation or bylaws a system of internal capital accounts to reflect the book value and to determine the redemption price of membership shares, capital stock, and written notices of allocation.

(2) The articles of incorporation or bylaws of an employee cooperative may permit the periodic redemption of written notices of allocation and capital stock, and must provide for recall and redemption of the membership share upon termination of membership in the cooperative. No redemption shall be made if redemption would result in a violation of RCW 23A.08.020.

(3) The articles of incorporation or bylaws may provide for the employee cooperative to pay or credit interest on the balance in each member's internal capital account.

(4) The articles of incorporation or bylaws may authorize assignment of a portion of retained net earnings and net losses to a collective reserve account. Earnings assigned to the collective reserve account may be used for any and all corporate purposes as determined by the board of directors.

NEW SECTION. Sec. 10. (1) An internal capital account cooperative is an employee cooperative whose entire net book value is reflected in internal capital accounts, one for each member, and a collective reserve account, and in which no persons other than members own capital stock. In an internal capital account cooperative, each member shall have one and only one vote in any matter requiring voting by stockholders.

(2) An internal capital account cooperative shall credit the paid-in membership fee and additional paid-in capital of a member to the member's internal capital account, and shall also record the apportionment of retained net earnings or net losses to the members in accordance with patronage by appropriately crediting or debiting the internal capital accounts of members. The collective reserve account in an internal capital account cooperative shall reflect any paid-in capital, net losses, and retained net earnings not allocated to individual members.

(3) In an internal capital account cooperative, the balances in all the individual internal capital accounts and collective reserve account, if any, shall be adjusted at the end of each accounting period so that the sum of the balances is equal to the net book value of the employee cooperative.

NEW SECTION. Sec. 11. (1) When any employee cooperative revokes its election in accordance with section 4 of this act, the articles of amendment shall provide for conversion of membership shares and internal capital accounts or their conversion to securities or other property in a manner consistent with Title 23A RCW.

(2) An employee cooperative that has not revoked its election under this chapter may not consolidate or merge with another corporation other than an employee cooperative. Two or more employee cooperatives may consolidate or merge in accordance with chapter 23A.20 RCW.

NEW SECTION. Sec. 12. Sections 1 through 11 of this act shall constitute a new chapter in Title 23 RCW.

Sec. 13. Section 32, chapter 282, Laws of 1959 as last amended by section 1, chapter 90, Laws of 1986 and RCW 21.20.320 are each amended to read as follows:

The following transactions are exempt from RCW 21.20.040 through 21.20.300 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.

(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.

(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 any rule by the director if 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 transactions by a mutual or cooperative association issuing to its patrons any receipt, written notice, certificate of indebtedness, or stock for a patronage dividend, or for contributions to capital by such patrons in the association if any such receipt, written notice, or certificate made pursuant to this paragraph is nontransferable except in the case of death or by operation of law and 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.

NEW SECTION. Sec. 14. The intent of the legislature in amending RCW 21.20.320 is to except from chapter 21.20 RCW membership shares in cooperatives that are organized under cooperative principles. The securities division of the department of licensing shall retain its authority to investigate organizations purporting to be cooperatives to ensure that such organizations are organized and operating under cooperative principles. The legislature finds that such cooperative principles include, but are not limited to: (1) Nontransferability of membership interests, except in the case of death, operation of law, or redemption by the cooperative; (2) no profits paid to such membership interests; and (3) each member in the cooperative has voting rights on the basis of one vote per member.

NEW SECTION. Sec. 15. A new section is added to chapter 43.63A RCW to read as follows:

(1) The department of community development shall integrate an employee ownership program within its existing technical assistance programs. The employee ownership program shall provide technical assistance to cooperatives authorized under sections 1 through 11 of this act and conduct educational programs on employee ownership and self-management. The department shall include information on the option of employee ownership wherever appropriate in its various programs.

(2) The director of the department shall form an employee ownership advisory panel to assist in the development of the employee ownership program. The panel shall consist of representatives of educational institutions; local, regional, and national cooperative and employee-ownership organizations; employee-owned cooperatives; firms with employee stock ownership plans; and associate development organizations.

(3) The department shall maintain a list of firms and individuals with expertise in the field of employee ownership and utilize such firms and individuals, as appropriate, in delivering and coordinating the delivery of technical, managerial, and educational services. In addition, the department shall work with and rely on the services of the department of trade and economic development, the employment security department, and state institutions of higher education to promote employee ownership.

(4) The department shall report to the governor, the trade and economic development committee of the house of representatives, the commerce and labor committee of the senate, and the ways and means committees of each house by December 1 of 1988, and each year thereafter, on the accomplishments of the employee-ownership program. Such reports shall include the number and types of firms assisted, the number of jobs created by such firms, the types of services, the number of workshops presented, the number of employees trained, and the results of client satisfaction surveys distributed to those using the services of the program.

(5) For purposes of this section, an employee stock ownership plan qualifies as a cooperative if at least fifty percent, plus one share, of its voting shares of stock are voted on a one-person-one-vote basis.

NEW SECTION. Sec. 16. 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 April 20, 1987.

Passed the Senate April 13, 1987.

Approved by the Governor May 18, 1987.

Filed in Office of Secretary of State May 18, 1987.

CHAPTER 458

[House Bill No. 1228]

ALCOHOL AND SUBSTANCE ABUSE—PENALTIES—TREATMENT

AN ACT Relating to criminal penalties for, criminal sentences for, education regarding, and treatment for alcohol and substance abuse; amending RCW 9.94A.030, 66.44.270, 69.50.401, 69.50.406, 26.28.080, 66.08.180, 66.24.320, 66.24.330, 48.21.160, 48.21.180, 48.44.240, and 48.46.350; adding a new section to chapter 48.21 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 69.50 RCW; adding a new chapter to Title 69 RCW; creating a new section; repealing RCW 48.21.170; providing effective dates; and declaring an emergency.